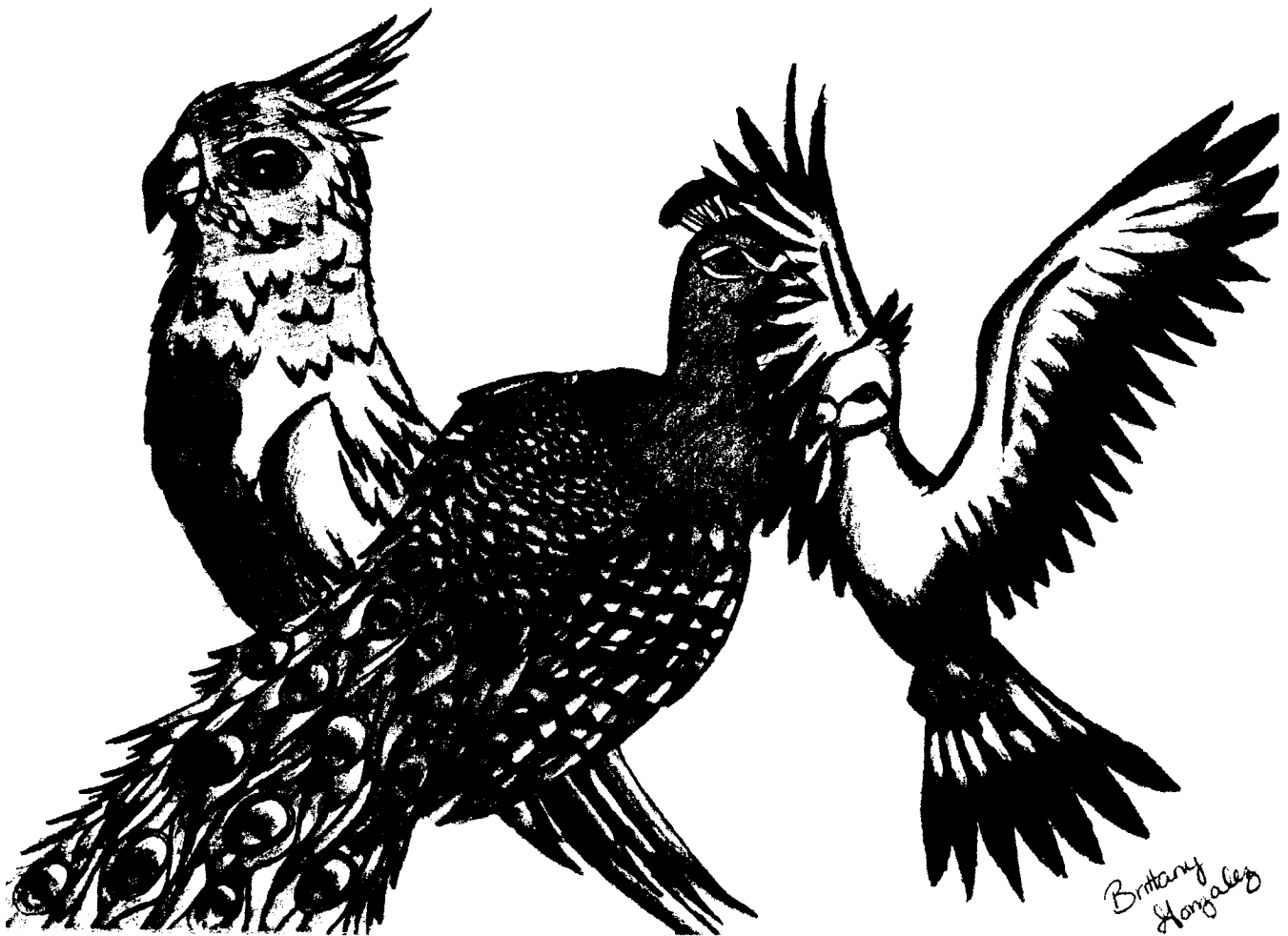

TEXAS REGISTER

Volume 33 Number 24

June 13, 2008

Pages 4577 - 4760



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

Texas Register, (ISSN 0362-4781, USPS 120-090), is published weekly (52 times per year) for \$211.00 (\$311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

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The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register***, 136 Carlin Rd., Conklin, N.Y. 13748-1531.



a section of the
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P.O. Box 13824
Austin, TX 78711-3824
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IN THIS ISSUE

GOVERNOR

Appointments4583

ATTORNEY GENERAL

Opinions4585

PROPOSED RULES

TEXAS HIGHER EDUCATION COORDINATING BOARD

AGENCY ADMINISTRATION

19 TAC §1.164587

GRANT AND SCHOLARSHIP PROGRAMS

19 TAC §22.244587

19 TAC §22.2294588

TEXAS EDUCATION AGENCY

STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND

19 TAC §33.54588

CHARTERS

19 TAC §100.1, §100.1014590

BUDGETING, ACCOUNTING, AND AUDITING

19 TAC §109.51, §109.524591

DEPARTMENT OF STATE HEALTH SERVICES

ORAL HEALTH IMPROVEMENT SERVICES PROGRAM

25 TAC §§49.1 - 49.15, 49.174594

25 TAC §§49.1 - 49.44594

25 TAC §§49.5 - 49.94596

25 TAC §§49.10 - 49.154597

25 TAC §§49.16 - 49.184598

HEALTH CARE INFORMATION

25 TAC §§421.61 - 421.684599

TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

28 TAC §134.4024614

SCHOOL LAND BOARD

LAND RESOURCES

31 TAC §§155.1 - 155.5, 155.154626

31 TAC §155.6, §155.84640

COMPTROLLER OF PUBLIC ACCOUNTS

FUNDS MANAGEMENT (FISCAL AFFAIRS)

34 TAC §5.514641

34 TAC §5.544643

34 TAC §5.574645

34 TAC §5.614647

TEXAS PROCUREMENT AND SUPPORT SERVICES

34 TAC §20.484656

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

GENERAL PROVISIONS

37 TAC §151.214657

37 TAC §151.734658

CORRECTIONAL INSTITUTIONS DIVISION

37 TAC §152.614659

TEXAS JUVENILE PROBATION COMMISSION

TEXAS JUVENILE PROBATION COMMISSION STANDARDS

37 TAC §341.604660

TEXAS DEPARTMENT OF TRANSPORTATION

TRANSPORTATION PLANNING AND PROGRAMMING

43 TAC §15.134661

ADOPTED RULES

OFFICE OF THE SECRETARY OF STATE

ELECTIONS

1 TAC §§81.15 - 81.17, 81.19, 81.234663

TEXAS JUDICIAL COUNCIL

REPORTING REQUIREMENTS

1 TAC §171.1, §171.24665

1 TAC §§171.1 - 171.64665

TEXAS DEPARTMENT OF AGRICULTURE

QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

4 TAC §19.24667

STATE BOARD FOR EDUCATOR CERTIFICATION

GENERAL CERTIFICATION PROVISIONS

19 TAC §§232.1 - 232.3, 232.64669

19 TAC §§232.800, 232.810, 232.820, 232.830, 232.840, 232.850, 232.860, 232.870 - 232.872, 232.880, 232.8904669

19 TAC §232.9004670

CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

19 TAC §§233.1 - 233.9, 233.11 - 233.14	4670
POLYGRAPH EXAMINERS BOARD	
POLYGRAPH EXAMINER INTERNSHIP	
22 TAC §391.5	4671
GENERAL	
22 TAC §393.1	4672
DEPARTMENT OF STATE HEALTH SERVICES	
FAMILY PLANNING	
25 TAC §§56.1 - 56.19	4673
25 TAC §§56.4 - 56.16	4673
COMPTROLLER OF PUBLIC ACCOUNTS	
TAX ADMINISTRATION	
34 TAC §3.833	4673
TEXAS DEPARTMENT OF CRIMINAL JUSTICE	
CORRECTIONAL INSTITUTIONS DIVISION	
37 TAC §152.51	4682
SPECIAL PROGRAMS	
37 TAC §159.1	4683
TEXAS DEPARTMENT OF TRANSPORTATION	
CONTRACT MANAGEMENT	
43 TAC §9.3	4683
43 TAC §9.38	4685
TRAFFIC OPERATIONS	
43 TAC §§25.401, 25.405, 25.406, 25.408	4685
RULE REVIEW	
Proposed Rule Review	
Texas Education Agency	4689
Adopted Rule Reviews	
Texas Department of Agriculture	4689
Texas Education Agency	4689
TABLES AND GRAPHICS	
.....	4691
IN ADDITION	
Department of Aging and Disability Services	
Notice of Public Hearing	4735
Department of Assistive and Rehabilitative Services	
Request for Proposal	4735
Coastal Coordination Council	

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program	4735
Comptroller of Public Accounts	
Notice of Award	4736
Office of Consumer Credit Commissioner	
Notice of Rate Ceilings	4736
East Texas Council of Governments	
Public Notice	4736
Texas Education Agency	
Notice of Correction: Request for Applications Concerning Dropout Recovery Pilot Program	4737
Employees Retirement System of Texas	
Request for Proposals - Evaluation of Actuarial Assumptions	4737
Texas Commission on Environmental Quality	
Agreed Orders	4738
Enforcement Orders	4740
Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions	4744
Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions	4745
Notice of Receipt of Application for a Municipal Solid Waste Management Facility	4746
Notice of Water Quality Applications	4747
General Land Office	
Notice of Extension of Public Comment Period	4748
Texas Department of Insurance	
Company Licensing	4748
Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer	4748
Notice of Public Hearing	4748
Texas Lottery Commission	
Instant Game Number 774 "\$1,000,000 Vegas Luck"	4749
Instant Game Number 817 "\$1 Million Cash"	4749
Instant Game Number 823 "\$130 Million Spectacular"	4750
Instant Game Number 825 "\$1 Million Extravaganza"	4750
Instant Game Number 833 "\$130 Million Payout Bonanza"	4750
Instant Game Number 1016 "\$1 Million Holiday Winnings"	4751
Instant Game Number 1050 "Pieces of Eight"	4751
North Central Texas Council of Governments	
Notice of Consultant Contract Award	4755
Public Utility Commission of Texas	

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority	4755
Notice of Application for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider	4756
Notice of Application for Service Provider Certificate of Operating Authority	4756
Notice of Application for Service Provider Certificate of Operating Authority	4756
Notice of Application for Service Provider Certificate of Operating Authority	4756
Notice of Application to Relinquish Retail Electric Provider (REP) Certification.....	4757
Request for Proposals: Consulting Expert Services Concerning the Compliance of Certain Generating Units with Rules on Governor Response and the Provision of Frequency Bias	4757

Second Notice of Amended Application for Certificate of Convenience and Necessity for a Proposed Transmission Line in Chambers, Hardin, Jasper, Jefferson, Liberty, Newton and Orange Counties, Texas...	4757
--	------

Texas State Technical College System

Notice of Contract Award	4758
--------------------------------	------

Texas Department of Transportation

Public Notice of Final Environmental Impact Statement (Grand Parkway Segment F-1, Harris County, Texas)	4758
---	------

University of Houston

Amended Notice of Request for Proposal	4759
--	------

The University of Texas System

Notice of Intent to Seek Consultant Services	4759
--	------

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
<http://www.state.tx.us/>

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for May 29, 2008

Appointed as Judge of the 435th Judicial District Court, Montgomery County, pursuant to SB 1951, 80th Legislature, Regular Session, for a term until the next General Election and until his successor shall be duly elected and qualified, Michael Seiler of The Woodlands.

Appointed to the Texas Coastal Coordination Council for a term to expire May 31, 2010, George Deshotels of Matagorda (replacing Victor Pierson of Jamaica Beach whose term expired).

Appointed to the Texas Coastal Coordination Council for a term to expire May 31, 2010, Robert Jones of Corpus Christi (Mr. Jones is being reappointed).

Appointed to the Texas Historical Records Advisory Board for a term to expire February 1, 2011, Jennifer Boswell Pickens of Dallas (replacing Ann Maria Pfeiffer of San Antonio whose term expired).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2009, Melanie Marshall of Mansfield (replacing Bruce Anthony Matson of Houston who resigned).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2011, John Hageman of San Antonio (replacing Ian Hamilton of Cypress whose term expired).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2011, Mark Silberman of Austin (replacing Judith Pester of El Paso who resigned).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2011, Kevin Raabe of Floresville (Mr. Raabe is being reappointed).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2013, Bill Campbell of Fort Worth (replacing Odis Mack of Katy whose term expired).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2013, Jay Murphy of Houston (replacing Earl Erdmann of Midland whose term expired).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2013, Darlene Metter of San Antonio (Ms. Metter is being reappointed).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2013, Mitchell Lucas of Granbury (Mr. Lucas is being reappointed).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2013, Bradley Bunn of Andrews (Mr. Bunn is being reappointed).

Rick Perry, Governor

TRD-200802810

Appointments for June 2, 2008

Appointed to the Red River Authority of Texas Board of Directors for a term to expire August 11, 2009, Cliff A. Skiles of Hereford (Mr. Skiles is being reappointed).

Appointed to the Red River Authority of Texas Board of Directors for a term to expire August 11, 2009, Wilson Scaling, II of Henrietta (replacing Carol Carlson Gunn of Lakeside City whose term expired).

Appointed to the Red River Authority of Texas Board of Directors for a term to expire August 11, 2009, Jerry Bob Daniel of Truscott (replacing William K. Daniel of Wichita Falls whose term expired).

Appointed to the Red River Authority of Texas Board of Directors for a term to expire August 11, 2013, Clyde M. Siebman of Pottsboro (replacing Pat Peale of Lake Kiowa whose term expired).

Appointed to the State Health Services Council for a term to expire February 1, 2011, Kirk Aquilla Calhoun of Tyler (replacing Jaime A. Davidson of Dallas who resigned).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2009, John Steinmetz of Lubbock (replacing Jere M. Lawrence of Sweetwater who resigned).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2011, Mary Ward of Granbury (replacing Truman Blum of Clifton who resigned).

Appointed as the Student Regent for the University of North Texas, effective June 1, 2008, for a term to expire May 31, 2009, Meghan Vittrup of Lewisville. Ms. Vittrup is replacing Diana Schulz of Fort Worth whose term expired.

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Jim Kester of Austin (Mr. Kester is being reappointed).

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Tammy Hawkins of Odessa (Ms. Hawkins is being reappointed).

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Charles Brawner of Katy (Mr. Brawner is being reappointed).

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Kevin Knight of Houston (Mr. Knight is being reappointed).

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Milton Duntley of El Paso (Mr. Duntley is being reappointed).

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Harold Gaither, Jr. of Quinlan (Mr. Gaither is being reappointed).



Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Elizabeth Godwin of Houston (Ms. Godwin is being reappointed).

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Jane Wetzel of Dallas (Ms. Wetzel is being reappointed).

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Felix Mejia, Jr. of Brownsville (Mr. Mejia is being reappointed).

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Mario Watkins of Pearland (Mr. Watkins is being reappointed).

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, David Gutierrez of Huntsville (Mr. Gutierrez is being reappointed).

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Vicki Spriggs of Austin (Ms. Spriggs is being reappointed).

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, James Smith of Austin (replacing Dwight Harris of Austin).

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Matt Mims of Colleyville (replacing Susan Reed of San Antonio).

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Magdalena Manzano of College Station (replacing Marshawn Evans of Richardson).

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Stacey Parker of Austin (replacing Lorena Gomez of Houston).

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Christopher Demerson of Missouri City (replacing Marcus Garrett of Huntsville).

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Luke Lowenfield of Austin.

Rick Perry, Governor
TRD-200802890



THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

Opinions

Opinion No. GA-0630

The Honorable Kevin Bailey

Chair, Committee on Urban Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Eligibility of particular owners to sign a zoning change protest under section 211.006(d), Local Government Code (RQ-0654-GA)

SUMMARY

A landowner is eligible to sign a protest to a proposed zoning change under section 211.006(d)(2), Local Government Code, if the lot or land is within the specified geographic limits and ownership is indicated on the most recently approved city tax roll.

Opinion No. GA-0631

The Honorable Fred Hill

Chair, Committee on Local Government Ways and Means

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Implementation of changes to tax proceedings required by recently enacted House Bill 1010, which provides for the consolidation of appraisal districts (RQ-0655-GA)

SUMMARY

Despite the enactment of House Bill 1010 by the Eightieth Legislature, an appraisal district operating in overlapping territory by operation of section 6.02(b) of the Tax Code retains authority to hear and determine pending corrective motions and taxpayer protests concerning property in that territory that relate to the 2007, or prior, tax year. With respect to appraisal districts with overlapping territory in the tax years prior to the 2008 tax year, the prior operation of former section 6.025 is preserved by the Code Construction Act's general savings clause.

An appraisal district operating in overlapping territory under former section 6.02(b) retains authority to hear and determine those timely-filed corrective motions and taxpayer protests that concern the appraisal of property for a tax year prior to the 2008 tax year.

Opinion No. GA-0632

The Honorable Rick Perry

Governor of Texas

Post Office Box 12428

Austin, Texas 78711-2428

Re: Constitutionality of section 41(e)(3) of the Probate Code, which permits a probate court to declare that a parent may not inherit from his own child if the parent has been convicted of one of several crimes against a child (RQ-0649-GA)

SUMMARY

Article I, section 21 of the Texas Constitution provides that "no conviction shall work corruption of blood or forfeiture of estate," which means that a person may not be denied the right to inherit on the basis of a criminal conviction. Texas courts have found limits to that provision in the Slayer's Rule and the constructive trust doctrine, which prevent a convicted murderer from receiving life insurance proceeds or inheriting property from the murder victim.

Absent the Texas Supreme Court's expansion of these two exceptions, a court would likely find that Probate Code section 41(e)(3) contravenes article I, section 21 of the Texas Constitution when applied to bar a person's inheritance from his own child under circumstances not within either the Slayer's Rule or the constructive trust doctrine.

Opinion No. GA-0633

The Honorable Vicki Truitt

Chair, Committee on Pensions and Investments

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether an educational institution violates article 6228a-5, section 9(a)(4) - (7) of the Texas Revised Civil Statutes if the institution contracts with a third-party administrator that is owned by or otherwise affiliated with a company that sells qualified 403(b) investment products to the institution's employees (RQ-0653-GA)

SUMMARY

Whether an educational institution violates article 6228a-5, section 9(a)(4), (6) - (7) of the Revised Civil Statutes by contracting with a third-party administrator that is affiliated with a company that sells qualified 403(b) investment products to the educational institution's

employees is a question requiring the resolution of facts. An educational institution may provide a third-party administrator that is affiliated with a company offering qualified 403(b) investment products to employees of the educational institution with exclusive access to employees' financial information without violating section 9(a)(5), although a court may find a violation in particular circumstances.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200802878
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: June 4, 2008



PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.16

The Texas Higher Education Coordinating Board proposes amendments to §1.16 concerning contracts for materials and services. Specifically, this amendment will provide that the Commissioner may approve contract cost increases of up to ten percent for contracts previously approved by either the Board or the Agency Operations Committee without resubmitting the contracts for approval.

Mr. William M. Franz, General Counsel, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Franz has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the increased efficiency of agency contracting operations. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to William M. Franz, General Counsel, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §61.067, which provides the Coordinating Board with the authority to make contracts.

The amendment affects Texas Education Code, §61.067.

§1.16. Contracts for Materials and Services.

(a) - (f) (No change.)

(g) In the event that a contract for a given amount has been approved by either the Board or the Agency Operations Committee, as applicable, and circumstances alter such that the expenditure necessary under the contract increases by not more than ten percent, the Commissioner may approve such an increase. Should the increase in expenditure exceed ten percent, the contract must be resubmitted for approval by the Board or Agency Operations Committee, as appropriate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 30, 2008.

TRD-200802819

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: July 24, 2008

For further information, please call: (512) 427-6114



CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §22.24

The Texas Higher Education Coordinating Board proposes an amendment to §22.24 concerning Provisions for the Tuition Equalization Grant Program. Specifically, new §22.24(3)(C) has been added to clarify the continuation requirements for first-time entering undergraduates who enter in the second regular term or semester.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the section will be clarification of program definitions and requirements. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, lois.hollis@thechb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.229 which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §§61.221 - 61.230.

The amendments affect §§61.221 - 61.230.

§22.24. *Eligible Students.*

To receive an award through the TEG Program, a student must:

(1) - (2) (No change.)

(3) maintain satisfactory academic progress in his or her program of study which requires:

(A) - (B) (No change.)

(C) A first time entering freshman student enrolling in a participating institution for the second regular term or semester in a given academic year meets the semester-credit-hour requirement outlined in subparagraph (B)(i) of this paragraph for continuing in the program if he or she completes at least 12 semester credit hours or its equivalent during that term or semester.

(4) - (8) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 28, 2008.

TRD-200802804

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: July 24, 2008

For further information, please call: (512) 427-6114



SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

19 TAC §22.229

The Texas Higher Education Coordinating Board proposes an amendment to §22.229 concerning the Toward Excellence, Access and Success (TEXAS) Grant Program. Specifically, new §22.229(b)(2)(D) has been added to clarify the continuation requirements for first-time entering undergraduates who enter in the second regular term or semester.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering these changes in the rules.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the sections will be an easier understanding of program requirements. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §56.303, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §§56.301 - 56.311.

The amendments affect Texas Education Code, §56.301 - 56.311.

§22.229. *Satisfactory Academic Progress.*

(a) (No change.)

(b) At the end of the year in which a person receives a continuation award:

(1) (No change.)

(2) A recipient who was awarded an initial year award through the TEXAS Grant Program on or after September 1, 2005 shall, unless granted a hardship postponement in accordance with §22.231 of this title (relating to Hardship Provisions):

(A) - (C) (No change.)

(D) A first time entering freshman student enrolling in a participating institution for the second regular term or semester in a given academic year meets the semester-credit-hour requirement outlined in subparagraph (B) of this paragraph for continuing in the program if he or she completes at least 12 semester credit hours or its equivalent during that term or semester.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 28, 2008.

TRD-200802805

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: July 24, 2008

For further information, please call: (512) 427-6114



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND

19 TAC §33.5

The State Board of Education (SBOE) proposes an amendment to §33.5, concerning the code of ethics policy for managing and investing the Texas Permanent School Fund (PSF). The section establishes procedures and requirements for a code of ethics policy relating to the Texas PSF. The proposed amendment would address reporting campaign contributions and business or financial transactions.

The proposed amendment would include the addition of language in new subsection (m) relating to disclosure requirements for political campaign contributions. New subsection (m) would apply to PSF service providers and any person or firm responding to a request for proposals relating to the management and investment of the PSF. Subsequent subsections would be re-lettered accordingly and a technical edit would be made in re-lettered subsection (s) to include a heading.

In addition, language would be added in new subsection (e)(9) requiring an SBOE member to disclose any business or financial transaction greater than \$50 in value with a PSF service provider.

Proposed language in subsection (e)(9) would also specify that the first report filed after the amendment would take effect shall cover the preceding one-year period.

The new language in subsections (m) and (e)(9) includes an exemption from the provision in subsection (s) that new reports need only concern events after the effective date of an amendment.

In accordance with Texas Education Code, §43.0031(c), the SBOE will submit a copy of the proposed amendment to 19 TAC §33.5 to the Texas Ethics Commission and the state auditor for review and comment. The SBOE will consider any comments from the commission or state auditor prior to final adoption.

Holland Timmins, Executive Administrator and Chief Investment Officer of the Texas Permanent School Fund, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Timmins has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be establishment of additional provisions supporting the management and investment of the PSF. The distribution of the PSF will flow to the school districts and reduce the tax burden to the public and the state of Texas. There is no anticipated economic cost to persons who are required to comply with the proposed amendment. In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. A request for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §43.0031, which authorizes the State Board of Education to adopt and enforce an ethics policy that provides standards of conduct relating to the management and investment of the PSF, and the Texas Constitution, Article VII, §5(f).

The amendment implements the Texas Education Code, §43.0031, and the Texas Constitution, Article VII, §5(f).

§33.5. *Code of Ethics.*

(a) - (d) (No change.)

(e) General ethical standards.

(1) - (8) (No change.)

(9) An SBOE Member shall disclose on a quarterly basis any business or financial transaction greater than \$50 in value with a PSF Service Provider. Excluded from this subsection are checking accounts, savings accounts, credit cards, brokerage accounts, mutual funds, or other financial accounts that are provided to an SBOE Member under the same terms and conditions as they are provided to members of the general public. The reports shall be filed on or before January 15, April 15, July 15, and October 15 and shall cover the preceding three months. The first report filed for each SBOE Member shall cover

the preceding one-year period. Subsection (s) of this section does not apply to the first report filed.

(f) - (l) (No change.)

(m) Campaign contributions.

(1) A PSF Service Provider shall, no later than April 15 and October 15, file a semi-annual report of each political contribution that the PSF Service Provider has made to an SBOE Member or a candidate seeking election to the SBOE. The report shall be for the six-month time period preceding the reporting dates and include the name of each SBOE Member who received a contribution, the amount of each contribution, and date of each contribution. Subsection (s) of this section does not apply to the first report filed.

(2) Any person or firm filing a response to a request for proposals relating to the management and investments of the PSF shall disclose in the response whether at any time in the preceding four years, the person or firm has made a campaign contribution to a candidate for or member of the SBOE.

(n) ~~(m)~~ Compliance with professional standards.

(1) SBOE Members and PSF Service Providers who are members of professional organizations which promulgate standards of conduct must comply with those standards.

(2) PSF Service Providers must comply with the Code of Ethics and Standards of Professional Conduct of the Association for Investment Management and Research.

(o) ~~(n)~~ Transactions between PSF Service Providers and/or consultants.

(1) PSF Service Providers or persons who act as consultants to the SBOE regarding investment and management of the PSF shall not engage in any transaction involving the assets of the PSF with another PSF Service Provider or a person who acts as a consultant to the SBOE regarding investment and management of the PSF.

(2) PSF Service Providers and/or consultants to the SBOE who provide advice regarding investment and management of the PSF shall report to the SBOE on a quarterly basis all investment transactions or trades and any fees or compensation paid or received in connection with the transactions or trades with another PSF Service Provider or a person who acts as a consultant to the SBOE regarding investment and management of the PSF.

(p) ~~(o)~~ Compliance and enforcement.

(1) The SBOE will enforce this rule through its chair and vice chair and the commissioner of education.

(2) Any violation will be reported to the chair and vice chair of the SBOE and the commissioner of education and a recommended action will be presented to the SBOE. A violation of this section may result in the termination of the contract or a lesser sanction. Repeated minor violations may also result in the termination of the contract.

(3) The executive director of the PSF shall act as custodian of all statements, waivers, and reports required under this section for purposes of public disclosure requirements.

(4) The ethics officer of the TEA may respond to inquiries concerning the provisions of this section. The ethics officer may confer with the general counsel and the executive director of the PSF.

(5) No payment shall be made to a PSF Service Provider who has failed to timely file a completed report as described by subsection (k) of this section, until a completed report is filed.

(q) ~~[(p)]~~ Ethics training. The SBOE shall receive annual training regarding state ethics laws through the Texas Ethics Commission and the TEA's ethics officer.

(r) ~~[(q)]~~ TEA general ethical standards. The commissioner of education and PSF staff shall comply with the General Ethical Standards for the Staff of the Permanent School Fund and the Commissioner of Education.

(s) ~~[(r)]~~ Reporting period. A new report required by an amendment to the code of ethics need only concern events after the effective date of the amendment. An amendment to a rule that presently requires a report does not effect the reporting period unless the amendment explicitly changes the reporting period.

(t) ~~[(s)]~~ Statutory statement.

(1) A "statutory financial advisor or service provider" as defined in this subsection shall on or before April 15 file a statement as required by Texas Government Code, §2263.005, with the commissioner of education and the state auditor, for the previous calendar year. The statement will be deemed filed when it is actually received. A statutory financial advisor or service provider shall promptly file a new or amended statement with the commissioner of education and the state auditor whenever there is new information required to be reported under Texas Government Code, §2263.005(a).

(2) A "statutory financial advisor or service provider" is a member of the Investment Advisory Committee or an individual or business entity, including a financial advisor, financial consultant, money or investment manager, or broker, who is not an employee of the TEA, but who provides financial services or advice to the TEA or the SBOE or an SBOE member in connection with the management and investment of the PSF and who may reasonably be expected to receive, directly or indirectly, more than \$5,000 in compensation from the TEA or the SBOE during a fiscal year.

(3) An annual statement required to be filed under this subsection will be made using the form developed by the state auditor.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 2, 2008.

TRD-200802826

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: July 13, 2008

For further information, please call: (512) 475-1497



CHAPTER 100. CHARTERS

SUBCHAPTER A. OPEN-ENROLLMENT

CHARTER SCHOOLS

19 TAC §100.1, §100.101

The State Board of Education (SBOE) proposes amendments to §100.1 and §100.101, concerning open-enrollment charter schools. Section 100.1 specifies provisions relating to application and selection procedures and criteria. Section 100.101 governs the procedure for collecting information for the annual report

on open-enrollment charter school governance. The proposed amendments would reflect a statutory correction and modify the annual governance reporting requirements.

The amendment to 19 TAC §100.1, Application and Selection Procedures and Criteria, is proposed in subsection (k) to update a statutory reference. The amendment proposed to 19 TAC §100.101, Annual Report on Open-Enrollment Charter Governance, would modify the annual governance reporting requirements for collecting identifying information about family members serving together on boards or as administrators. The proposed amendment to 19 TAC §100.101 does not require an additional report, only the inclusion of one new criterion on the existing governance reporting form.

Adrain Johnson, Associate Commissioner for Accreditation, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Dr. Johnson has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments would be disclosure of board and/or administrator relationships. Rules in 19 TAC Chapter 100, Subchapter A, help to define the processes by which charter schools provide new avenues for local restructuring, flexibility, innovation, and choices for parents and students. There is no anticipated economic cost to persons who are required to comply with the proposed amendments. In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. A request for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §§7.102(c)(9), 12.101, 12.110, 12.111, and 12.119, which authorizes the State Board of Education to: adopt an application form and a procedure that must be used to apply for a charter for an open-enrollment charter school and criteria to use in selecting a program for which to grant a charter; grant a charter on the application of an eligible entity for an open-enrollment charter school; and establish the procedure for collecting information for the annual report on open-enrollment charter school governance, including the specification and description of certain powers and duties.

The amendments implement the Texas Education Code, §§7.102(c)(9), 12.101, 12.110, 12.111, and 12.119.

§100.1. Application and Selection Procedures and Criteria.

(a) - (j) (No change.)

(k) An open-enrollment charter shall be in the form and substance of a written contract signed by the chair of the SBOE and the chief operating officer of the school, but is not a contract for goods or services within the meaning of Texas Government Code, Chapter 2260.

The chief operating officer of the school shall mean the chief executive officer of the open enrollment charter holder under TEC, §12.1012 [~~§12.101~~].

§100.101. Annual Report on Open-Enrollment Charter Governance.

(a) No later than November 1 of each year, each open-enrollment charter holder shall file under §100.1013 of this title (relating to Filing of Documents), the following information on a charter school governance reporting form approved by the State Board of Education:

(1) identifying information for and compensation of each officer and member of the governing body of the open-enrollment charter holder;

(2) identifying information for and compensation of each officer of the charter school; and

(3) identifying information for and compensation of each member of the governing body of the charter school, if the charter holder has established a governing body for the charter school; and [-]

(4) identifying information about family members serving together on boards or as administrators.

(b) The identifying information required for an individual under subsection (a) of this section may include facsimile numbers and electronic mail addresses and shall include:

(1) the title of each position held or function performed by the individual;

(2) the specific powers and duties that the governing body of the charter holder or charter school have delegated to the individual, as described by the powers and duties listed in the charter;

(3) the legal name of the individual;

(4) any aliases or names formerly used by the individual, including maiden name;

(5) a mailing address for the individual, if an officer; and the street address of the individual's primary residence, if a governing body member; and

(6) telephone numbers for the individual.

(c) The compensation information required for an individual under subsection (a) of this section shall include all compensation, remuneration, and benefits received by the individual in any capacity from the charter holder or the charter school, or from any contractor or management company doing business with the charter holder or charter school. The compensation reported shall include without limitation:

(1) all salary, bonuses, benefits, or other compensation received pursuant to an employment relationship;

(2) all compensation received for goods or services under contract, agreement, informal arrangement, or otherwise;

(3) all payment of or reimbursement for personal expenses;

(4) all credit extended to the individual by the charter holder or charter school;

(5) the fair market value of all personal use of property paid for by the charter holder or charter school;

(6) the fair market value of all in-kind transfers of property;

(7) all compensation for goods or services provided to the charter holder through transactions unrelated to the charter school; and

(8) all other forms of compensation or remuneration received by the individual from the charter holder or charter school.

(d) No later than November 1 of each year, each open-enrollment charter holder shall file under §100.1013 of this title (relating to Filing of Documents):

(1) a copy of its articles of incorporation and bylaws, or comparable documents if the charter holder does not have articles of incorporation or bylaws; or

(2) if a copy of its articles of incorporation and bylaws or comparable documents is already on file under this subsection, a copy of any amendments or changes thereto.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 2, 2008.

TRD-200802827

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: July 13, 2008

For further information, please call: (512) 475-1497



CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER D. UNIFORM BANK BID OR REQUEST FOR PROPOSAL AND DEPOSITORY CONTRACT

19 TAC §109.51, §109.52

The State Board of Education (SBOE) proposes amendments to §109.51 and §109.52, concerning uniform depository bank bid and contract forms. Section 109.51 establishes the requirement that each school district submit a blank uniform bid form to each bank located in the district and, if desired, to other banks interested in acting as depository for all funds. The section includes the bid form prescribed by the SBOE. Section 109.52 establishes the requirement that each school district select a bank as a school depository and enter into a depository contract with the bank. A school district may select and contract with more than one bank. The section includes the depository contract form with the content prescribed by the SBOE. The proposed amendments would update the current rules to reflect statutory changes resulting from House Bill (HB) 2411, 80th Texas Legislature, 2007.

HB 2411, 80th Texas Legislature, 2007, amended the Texas Education Code, §45.206, requiring school districts to choose whether to select a depository through a competitive bidding process or through a request for proposal process. The decision to use a request for proposal process is entirely voluntary. Current SBOE rule provides a uniform bid blank form and uniform depository contract form for selecting a depository by competitive bidding only.

In accordance with the statutory change, the proposed amendments to 19 TAC Chapter 109, Subchapter D, would revise the methods a district may choose to select a depository to include a request for proposal process. The required forms adopted in rule would also be updated to include current depository services reflective of technological advances since the forms were

last updated. The updated forms were developed in conjunction with stakeholder meetings with bankers and school district personnel. The proposed amendments to 19 TAC Chapter 109, Subchapter D, would also change the subchapter title to read, "Uniform Bank Bid or Request for Proposal and Depository Contract." Specifically, the proposed amendments would include the following.

The proposed amendment to 19 TAC §109.51 includes new language throughout to allow each school district to choose whether to select a depository through a competitive bidding process or through a request for proposal process. The proposed amendment would also include an updated uniform bid blank form (Figure: 19 TAC §109.51(c)) and a new uniform proposal blank form (Figure: 19 TAC §109.51(d)). The title of 19 TAC §109.51 and the uniform bid blank form would also be updated.

The proposed amendment to 19 TAC §109.52 includes an updated uniform depository contract form (Figure: 19 TAC §109.52(b)). Minor technical changes to language in the section would be proposed but no changes would be proposed to the uniform surety bond form (Figure: 19 TAC §109.52(d)).

Not later than the 60th day before the date a school district's current depository contract expires, the district shall choose whether to select a depository through a competitive bidding process or through a request for proposal process. The school district would document its choice of method to select a depository.

Adrain Johnson, Associate Commissioner for Accreditation, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Dr. Johnson has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments would be providing school districts the flexibility to determine the method by which they select the depository. School districts that choose to select a depository through a request for proposal process would have more freedom to negotiate depository services. There is no anticipated economic cost to persons who are required to comply with the proposed amendments. In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. A request for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §§7.102(c)(34), 45.206, and 45.208, which authorizes the State Board of Education to prescribe a uniform bid blank form for a school district to use in selecting a depository bank and to prescribe a uniform depository contract form.

The amendments implement the Texas Education Code, §§7.102(c)(34), 45.206, and 45.208.

§109.51. *Uniform Depository Bank Bid or Proposal Form.*

(a) Each school district shall choose whether to select a depository through a competitive bidding process or through a request for proposal process at least 60 days before the termination of the current depository contract.

(b) ~~[(a)]~~ Each school district is to use a uniform bid or proposal blank form as specified in Texas Education Code, §45.206. A school district may add other terms to the uniform bid or proposal blank form based on additional requirements. The selected [This] form must be mailed to each bank located in the school district at least 30 days before the termination of the current depository contract. The selected [This] form must be filed with the Texas Education Agency in accordance with filing instructions specified in the form.

(c) ~~[(b)]~~ The uniform bid blank form is provided in this subsection entitled "Bid Form for ~~[Acting as] Depository Services [for All Funds]~~ ." Figure: 19 TAC §109.51(c)

~~[Figure: 19 TAC §109.51(b)]~~

(d) The uniform proposal blank form is provided in this subsection entitled "Proposal Form for Depository Services."

Figure: 19 TAC §109.51(d)

§109.52. *Uniform Depository Bank Contract and Surety Bond Forms.*

(a) (No change.)

(b) The uniform depository contract form is provided in this subsection entitled "Depository Contract for Funds of Independent School Districts Under Texas Education Code, Chapter 45, Subchapter G, School District Depositories."

Figure: 19 TAC §109.52(b)

~~[Figure: 19 TAC §109.52(b)]~~

(c) (No change.)

(d) The uniform surety bond form is provided in this subsection entitled "Texas School Depository Bond Form."

Figure: 19 TAC §109.52(d) (No change.)

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 2, 2008.

TRD-200802828

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: July 13, 2008

For further information, please call: (512) 475-1497



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 49. ORAL HEALTH IMPROVE- MENT SERVICES PROGRAM

The Executive Commissioner of the Health and Human Services Commission (HHSC) on behalf of the Department of State Health Services (department) proposes the repeal of §§49.1 - 49.15,

and 49.17, and new Subchapters A - D, §§49.1 - 49.18, concerning the dental program authorized under the Oral Health Improvement Act, Health and Safety Code, Chapter 43.

BACKGROUND AND PURPOSE

The Oral Health Improvement Services Program (program) rules are used to administer the State Oral Health Program. When fully funded, the program can provide comprehensive oral health services to eligible individuals. Currently, only the dental surveillance, data collection and reporting, and preventive services are funded. The treatment services, which include emergency and restorative services but not orthodontic services, and oral health promotion and education, currently are not funded.

The purpose of the program is to provide comprehensive oral health services to eligible individuals. Based on available funding and priority, oral health services may include dental surveillance, data collection and reporting; provision of preventive oral health services; provision of emergency oral health services; provision of comprehensive oral health services; and oral health promotion and education. Through currently available funding derived from state general revenue and federal grant dollars, central office staff and five regional dental teams consisting of a dentist and dental hygienist conduct dental surveillance, data collection and reporting, and provide preventive oral health services. These services are offered to eligible individuals, which are primarily pre-school and school-age children on the free and reduced lunch program in rural areas of the state who have limited or no access to preventive dental services. Historically, the funds were allocated for the provision of preventive, emergency and comprehensive dental services as well as oral health promotion and education.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 49.1 - 49.15 and 49.17 have been reviewed, and the department has determined that reasons for adopting the sections continue to exist, because rules on this subject are needed. Although the treatment, health promotion, and education portions of the program are not currently funded, retaining the rules allows the oral health treatment program to be implemented quickly if adequate funding is made available.

SECTION-BY-SECTION SUMMARY

Subchapter A. General Provisions. Section 49.1 describes the purpose and application of the rules. Section 49.2 sets forth the definitions used in the rules. Section 49.3 addresses the issue of program priorities and the fact that the provision of services is dependent upon funding. Section 49.4 indicates the methods the department may use to deliver services.

Subchapter B. Recipient Participation. Section 49.5 describes the application process for an individual to be prior authorized for oral health treatment services. Section 49.6 sets forth financial and residency requirements related to eligibility. Section 49.7 addresses the final eligibility determinant to receive oral health treatment services, which involves a dental examination. Section 49.8 addresses the criteria and process for denial, modification, suspension, and termination of oral health treatment services. Section 49.9 addresses a recipient's financial obligations and the potential for recovery of costs by the department.

Subchapter C. Provider Participation. Section 49.10 describes the criteria and requirements for providers to participate in the

program. Section 49.11 describes the provider application and contracting process. Section 49.12 addresses the criteria and process for termination of a provider contract. Section 49.13 addresses the payment of a non-provider for emergency care. Section 49.14 describes process and requirements for payment of provider claims. Section 49.15 describes when administrative sanctions may be imposed against a provider.

Subchapter D. Appeals Process. Section 49.16 addresses the administrative review process for an applicant, recipient, or provider to appeal certain program actions and decisions. Section 49.17 sets forth the basis for the right to request a due process hearing by an applicant, recipient, or provider. Section 49.18 describes the due process hearing.

FISCAL NOTE

Ms. Jann Melton-Kissel, the Director of Specialized Health Services Section, has determined that for each year of the first five-year period that the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Melton-Kissel also has determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. Interpretation of the rules determined that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Ms. Jann Melton-Kissel, also has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The anticipated public benefit is a clearly worded and succinct set of rules that will facilitate understanding by providers and recipients about benefits, services, rights and responsibilities associated with the Oral Health Improvement Services Program.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce the risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specially intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Dr. Linda M. Altenhoff, DDS, Department of State Health Services, P.O. Box 149347, MC-1938, Austin, Texas 78714-9347, (512) 458-7111,

extension 3001, or by email to Linda.Altenhoff@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

25 TAC §§49.1 - 49.15, 49.17

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by the Health and Safety Code, Chapter 43, which authorizes the department to provide comprehensive oral health services to eligible individuals; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The proposed repeals affect Health and Safety Code, Chapters 43 and 1001; and Government Code, Chapter 531.

§49.1. *Purpose.*

§49.2. *Definitions.*

§49.3. *Program Priorities.*

§49.4. *Application Process.*

§49.5. *Eligibility Requirements.*

§49.6. *Denial, Modification, Suspension, and Termination of Services.*

§49.7. *Procedures for Providing Services.*

§49.8. *Providers.*

§49.9. *Emergency Selection of Providers.*

§49.10. *Payment for Services.*

§49.11. *Coordination of Benefits and Recovery of Costs.*

§49.12. *Appeals.*

§49.13. *Confidentiality.*

§49.14. *Gifts and Donations.*

§49.15. *Nondiscrimination.*

§49.17. *Income Guidelines.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 2, 2008.

TRD-200802830

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: July 13, 2008

For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §§49.1 - 49.4

STATUTORY AUTHORITY

The proposed new sections are authorized by the Health and Safety Code, Chapter 43, which authorizes the department to provide comprehensive oral health services to eligible individuals; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The proposed new sections affect Health and Safety Code, Chapters 43 and 1001; and Government Code, Chapter 531.

§49.1. *Purpose and Application.*

(a) The rules in this chapter implement the Texas Oral Health Improvement Act, Health and Safety Code, Chapter 43 (Act). The Act authorizes the Department of State Health Services (department) to furnish oral health services to eligible individuals. Oral health services may include oral health promotion and education, preventive oral health services, and oral health treatment services to eligible low-income individuals.

(b) Subchapters B - D of this chapter apply only to the delivery of oral health treatment services under the department's Fee-for-Service Dental Care Program.

§49.2. *Definitions.*

The following words and terms, where used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Texas Oral Health Improvement Act, Health and Safety Code, Chapter 43.

(2) Action--Denial, modification, suspension or termination of treatment services or participation rights of an applicant or a recipient of the program.

(3) Administrative review--A secondary level of review available to applicants, recipients, and providers who want to resolve a conflict or appeal an administrative sanction or a denied claim.

(4) Administrative sanctions--Penalties imposed on a provider who fails to comply with program rules, policies, procedures or standards, which may include recoupment or adjustment of payments, or payment hold.

(5) Applicant--A person applying to receive oral health treatment services under the program, but for whom eligibility has not been established.

(6) Business day--Normal department operating hours from 8:00 a.m. - 5:00 p.m. Monday through Friday with the exception of state and federal holidays.

(7) Commissioner--The Commissioner of the Department of State Health Services.

(8) Conflict--The proposed modification, suspension or termination of a contract with a provider.

(9) Dentist--An individual licensed by the Texas State Board of Dental Examiners to practice dentistry in the State of Texas.

(10) Dentally accepted standards--Operating in accordance with the laws relating to the practice of dentistry and the rules of the Texas State Board of Dental Examiners and standards of practice.

(11) Department--Department of State Health Services.

(12) Eligible individual--An individual who meets the criteria necessary to receive oral health treatment services under the Act and the rules in this chapter.

(13) Emergency care--Oral health treatment services for relief of pain and infection, including extractions and basic restorative services to prevent premature loss of teeth.

(14) Manual--A compilation of policies, procedures, and instructions prepared by the department's Oral Health Program for the Fee-for-Service Dental Care Program to be used by providers of oral health treatment services. Participating providers will receive a copy of the Manual and any updates, changes, and amendments and must comply with its requirements during participation in the program.

(15) Non-provider--A dentist or physician licensed to practice under Texas state law but not currently under contract with the department to participate in the program.

(16) Oral Health Program (OHP)--The Oral Health Program of the department comprised of central office staff and regional dental teams.

(17) Oral health services--Preventive or treatment services affecting the structures of the mouth, including the hard and soft tissues such as teeth, jaws, gums, vestibule, tongue, cheeks, lips, floor and roof of the mouth, and adjacent masticatory structure, and oral health education and promotion activities.

(18) Other benefit--A benefit to which an individual is entitled, other than a benefit provided under the Act, for the payment of costs of oral health treatment services, including benefits available from:

(A) an insurance policy, group oral health plan, or pre-paid oral care plan;

(B) Title XVIII or Title XIX of the Social Security Act, as amended (42 U.S.C. §1395 *et seq.* and 42 U.S.C. §1396 *et seq.*);

(C) the Veteran's Administration;

(D) the Civilian Health and Medical Program of the Uniformed Services;

(E) worker's compensation or any other compulsory employer's insurance program;

(F) a public program created by federal law, state law, or the ordinances or rules of a municipality or political subdivision of the state; or

(G) a cause of action for dental or oral health treatment services expenses or a settlement or judgment based upon the cause of action, if the expenses are related to the need for treatment services provided under the Act.

(19) Physician--An individual licensed by the Texas Medical Board to practice medicine in the State of Texas.

(20) Program--The department's Fee-for-Service Dental Care Program administered by the department's OHP, which provides oral health treatment services to eligible individuals.

(21) Provider--A person with whom the department contracts to provide oral health treatment services under the Act.

(22) Recipient--A person approved as eligible to receive oral health treatment services.

(23) State dental director--A Texas licensed dentist who serves as the manager of the OHP, or that person's designee.

(24) State fiscal year--The period from September 1 through August 31 of the following year.

(25) Support--The contribution of money or services necessary for a person's maintenance, including food, clothing, shelter, transportation, and health care.

(26) Third-party nominator--A person aware of an applicant's economic condition who refers the applicant to the program for services. Third-party nominators include school administrators, school nurses, social workers, city or county officials, public health clinics, community health centers, dentists, physicians, or hospitals or any other source acceptable to the Executive Commissioner of the Health and Human Services Commission.

§49.3. Program Priorities.

(a) The provision of any and all oral health services is subject to the availability of funds.

(b) The department determines at the beginning of each biennium the categories of persons that will have priority for oral health services under the program, based upon the funding that is available. The department may change program priorities at any time.

(c) Providers must comply with all policies, procedures, and requirements for participation, including program priorities, and the program Manual.

(1) The department adopts by reference the program Manual, including all related policies, procedures, and any updates, changes, and amendments.

(2) A copy of the Manual is given to each provider participating in the program and is available for public inspection during regular business hours at the department's headquarters at Department of State Health Services, Texas Health Steps Branch, Mail Code 1938, 1100 West 49th Street, Austin, Texas 78756.

(d) Based upon the availability of funds, program services may be made available in every health service region of the state. The department determines the amount of funds to allocate to a health service region, and may modify the allocation at any time. Program administration is carried out through the department's central office and health service regions.

§49.4. Methods of Delivering Services.

Delivery of oral health services may be accomplished by any of the following methods.

(1) The department may provide or contract for oral health services, which may be limited to preventive services or oral health education and promotion activities.

(2) The department may contract with providers to participate in the program and provide oral health treatment services for eligible individuals. Requirements for provider participation and reimbursement are set forth in the program guidelines, instructions, and fee schedules in the Manual and related program policies and procedures.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 2, 2008.

TRD-200802831

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: July 13, 2008

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER B. RECIPIENT PARTICIPATION

25 TAC §§49.5 - 49.9

STATUTORY AUTHORITY

The proposed new sections are authorized by the Health and Safety Code, Chapter 43, which authorizes the department to provide comprehensive oral health services to eligible individuals; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The proposed new sections affect Health and Safety Code, Chapters 43 and 1001; and Government Code, Chapter 531.

§49.5. Application Process.

(a) An applicant for oral health treatment services must be referred to the program by a third-party nominator who knows the individual's economic condition.

(b) Each applicant for oral health treatment services must complete or cause to be completed an application form, which shall include the following information for the individual needing services:

(1) personal information, including name, address, birthdate, gender and ethnicity;

(2) a statement from the referring third-party nominator that the oral health treatment services are necessary to prevent or reduce the probability of pain, infection, or disease; and

(3) a statement by the applicant or the person responsible for the applicant's support that:

(A) services are requested;

(B) the applicant is a bona fide resident of Texas and the family income does not exceed the financial guidelines as required in §49.6 of this title (relating to Eligibility Requirements for Referral);

(C) the applicant is not eligible for another program or other benefit providing dental care; and

(D) the applicant or the person responsible for the applicant's support is financially unable to pay for all or part of the cost of the necessary oral health treatment services.

(c) Each applicant who will be referred for oral health treatment services, as described in §49.7 of this title (relating to Eligibility Requirements to Receive Oral Health Treatment Services), must have his/her application prior authorized in accordance with program policies and procedures, as defined in the Manual and any updates, changes, and amendments.

(d) The denial of any application must be in writing and must include the reason(s) for such denial. Unless the application is denied because program funds are reduced, curtailed, or unavailable, the individual applying for oral health treatment services has the right to an administrative review and a due process hearing in accordance with Subchapter D of this chapter (relating to Appeals Process).

(e) An individual has the right to reapply for program coverage at any time when there is a change of situation or condition.

§49.6. Eligibility Requirements for Referral.

(a) In order for a person to be eligible for referral for oral health treatment services, the applicant must meet the following criteria:

(1) the person must be a bona fide resident of Texas, which is a person who:

(A) is physically present within the geographic boundaries of the state;

(B) has an intent to remain within the state;

(C) maintains a physical residence with an address within the state; and

(D) does not claim residency in any other state or country; or

(2) the person is:

(A) residing in Texas and his/her parent(s), conservator, guardian, or caretaker, with whom the person consistently resides, is a bona fide resident of Texas; or

(B) residing in Texas and is the legal dependent spouse of a bona fide resident.

(b) The person must establish a financial need for oral health treatment services, which is based on family income, in accordance with program policies, procedures, and the Manual.

(1) The family income used to determine eligibility is the gross annual income of the applicant and his/her spouse, if applicable, or the gross annual income of person(s) legally obligated to support the applicant;

(2) Gross annual income includes earned wages, pensions or retirement benefits, child support payments received, alimony, unemployment compensation, worker's compensation, income from rental properties, or any monies received on a regular basis for family support purposes; and

(3) Income guidelines are based on current United States Department of Agriculture (USDA) poverty guidelines for determining eligibility for free meals (e.g. school free lunch program guidelines), which are incorporated by reference.

§49.7. Eligibility Requirements to Receive Oral Health Treatment Services.

(a) Following prior authorization of an application in accordance with §49.5 of this title (relating to Application Process), an applicant will be referred for a dental examination to determine whether the applicant is eligible to receive oral health treatment services. With the exception described in §49.13 of this title (relating to Treatment Services by Non-providers), a prior authorized applicant will be referred to a provider for this examination.

(1) The examining provider must certify to the department that he/she has examined the applicant and that the applicant is eligible to receive oral health treatment services in accordance with program policies and procedures, program priorities, and the Manual.

(A) If the applicant meets the eligibility requirements to receive oral health treatment services, the provider will perform the services in accordance with program policies, procedures, and the Manual.

(B) If the applicant does not meet the eligibility requirements to receive oral health treatment services, the provider will be paid only for the examination services provided, in accordance with program policies, procedures, and the Manual.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the final determination concerning an applicant's eligibility to receive oral health treatment services is made by the state dental director, in accordance with program policies, procedures, and the Manual.

(b) The applicant's initial eligibility date shall be the date upon which the application was prior authorized, as described in §49.5 of this title and will be effective for the remainder of the state fiscal year. Eligibility must be re-established for any subsequent state fiscal year in which oral health treatment services are sought, in accordance with the policies, procedures, and program priorities in effect at that time. To maintain eligibility for oral health treatment services throughout a state fiscal year, the individual must continue to meet the eligibility requirements set forth in §49.6 of this title (relating to Eligibility Requirements for Referral).

§49.8. Denial, Modification, Suspension, and Termination of Oral Health Treatment Services.

(a) Any person requesting or receiving oral health treatment services from the program may be notified that such services may be denied, modified, suspended, or terminated if:

- (1) information in the application is erroneous or falsified;
- (2) the person is not eligible;
- (3) required personal information is not provided;
- (4) obligated reimbursement to the program is not provided;
- (5) program funds are reduced or curtailed; or
- (6) program priorities are modified.

(b) The program will notify in writing the applicant or recipient or the person legally obligated to support the applicant or recipient of the action proposed to be taken and the reasons for such proposed action. The applicant or recipient shall have the right to an administrative review and/or a due process hearing in accordance with Subchapter D of this chapter (relating to Appeals Process) unless the action resulted from the reduction or cessation of program funds.

§49.9. Financial Obligations and Recovery of Costs.

(a) An individual is not eligible to receive oral health treatment services furnished by the Act to the extent that the individual or any person who has the legal obligation to support the individual is eligible for some other benefit that would pay for all or part of the services.

(b) An individual who applies for or receives oral health treatment services furnished under the Act must inform the department at the time of application and at any time during a period of eligibility to receive oral health treatment services of any other benefit to which the individual or any person who has the legal obligation to support the individual may be entitled.

(c) An individual who has received oral health treatment services covered by some other benefit, or any person who has a legal obligation to support that individual, must reimburse the department

to the extent of the oral health treatment services furnished when the other benefit is received.

(d) The eligibility requirement in subsection (a) of this section may be waived by the commissioner in certain individually considered cases where its enforcement will deny oral health treatment services to a class of otherwise eligible individuals because of conflicting state, local, or federal laws or regulations.

(e) The department may recover the cost of oral health treatment services provided under the Act from:

- (1) a person who does not pay or reimburse the department as required by the Act and the rules in this chapter; or
- (2) from any third party who has a legal obligation to pay other benefits and to whom notice of the obligation has been given.

(f) At the request of the commissioner, the attorney general may bring suit in the appropriate court of Travis County, Texas, on behalf of the department. The court may award attorney's fees, court costs, and interest accruing from the date on which the department provides the service to the date the department is reimbursed pursuant to a judgment in favor of the department.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 2, 2008.

TRD-200802832

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: July 13, 2008

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER C. PROVIDER PARTICIPATION

25 TAC §§49.10 - 49.15

STATUTORY AUTHORITY

The proposed new sections are authorized by the Health and Safety Code, Chapter 43, which authorizes the department to provide comprehensive oral health services to eligible individuals; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The proposed new sections affect Health and Safety Code, Chapters 43 and 1001; and Government Code, Chapter 531.

§49.10. Provider Participation Requirements.

Providers must meet the following criteria in order to participate in the program:

- (1) agree to comply with all program policies, procedures, rules and requirements, and the Manual;
- (2) agree to accept program fees as payment in full;
- (3) treat all applicants and recipients without discrimination;

(4) ensure that program recipients or persons legally responsible to support program recipients are not billed for the difference between the provider's regular fees and those paid by the program; and

(5) be licensed to practice dentistry in Texas and in good standing with the Texas State Board of Dental Examiners. Prospective providers under suspension by the licensing board will not be approved to participate in the program.

§49.11. Provider Application and Contract.

A prospective provider who meets the criteria for participation in the program, as described in §49.10 of this title (relating to Provider Participation Requirements), is eligible to contract with the department to provide oral health treatment services. To apply for program participation, a prospective provider must, after receiving information on the program including the schedule of current fees, sign a letter of agreement (contract) with the department. After the contract is properly executed, the prospective provider will be provided written notice of approval to participate in the program and a copy of the program Manual.

§49.12. Provider Termination.

(a) The contract between the provider and the department may be terminated without cause by either party with 30 days written notice. The department may modify, suspend, or terminate the contract of any provider from the program for due cause. Due cause includes but is not limited to:

- (1) breach of contract;
- (2) suspension or revocation of the provider's license by the Texas State Board of Dental Examiners;
- (3) disciplinary action(s) taken by the Texas State Board of Dental Examiners;
- (4) submission of false or fraudulent claims;
- (5) amendment or judicial interpretation of federal or state laws or other requirements in a way that would make it infeasible or impossible for either party to fulfill the agreement, or if either party is unable to agree on changes necessary for continuation of the agreement;
- (6) any violation of program policies, procedures, rules, or requirements; or
- (7) any other reason authorized by rule, regulation, statute, or contract.

(b) An administrative review and due process hearing is available to any provider for the resolution of conflict between the department and the provider in accordance with Subchapter D of this chapter (relating to Appeals Process).

(c) The department may not terminate a contract during the pendency of a hearing. The department may withhold payments during the pendency of a hearing, but the department must pay the withheld payments and resume contract payments if the final determination is favorable to the provider.

(d) Subsections (b) and (c) of this section do not apply if a contract is canceled by the department because of exhaustion of funds, if the contract expires according to its terms, or if the contract is canceled because program services are restricted or eliminated due to limited or unavailable funds.

§49.13. Treatment Services by Non-Providers.

The department may pay a non-provider for emergency care, in accordance with program policies, procedures, and the Manual, in cases where program providers are not available or able to provide the emer-

gency care and when delay in providing care would be detrimental to the recipient's health.

§49.14. Payment of Claims.

(a) Payment will not be made to providers or non-providers for services not authorized in accordance with program policies, procedures, the Manual, and the rules in this chapter. Payment for any service may be made only after the service has been delivered.

(b) Provider claims will be processed and considered for payment in accordance with program policies, procedures, and the Manual. Claims will be denied if the claim:

- (1) contains incomplete or inaccurate information; or
- (2) is not submitted in accordance with program policies, procedures, and the Manual.

(c) A provider claim that has been denied may be reconsidered for payment if the provider requests an administrative review, as described in §49.16 of this title (relating to Administrative Review). In order to receive an administrative review of the denied claim, the provider must request the administrative review in writing and return the claim, with the alleged error identified, to the OHP no later than 20 business days after the date of the notice of denial, accompanied by appropriate documentation for review.

§49.15. Administrative Sanctions.

Any provider who fails to provide and maintain quality services or dentally accepted standards, or who violates program policies, procedures, the Manual, or the rules in this chapter, may be subject to administrative sanctions, as determined appropriate by the state dental director, in accordance with program policies and procedures. A provider may request an administrative review, as described in §49.16 of this title (relating to Administrative Review), if a written request is received by the OHP no later than 20 business days after the date of the notice of administrative sanction.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 2, 2008.

TRD-200802833

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: July 13, 2008

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER D. APPEALS PROCESS

25 TAC §§49.16 - 49.18

STATUTORY AUTHORITY

The proposed new sections are authorized by the Health and Safety Code, Chapter 43, which authorizes the department to provide comprehensive oral health services to eligible individuals; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The proposed new sections affect Health and Safety Code, Chapters 43 and 1001; and Government Code, Chapter 531.

§49.16. Administrative Review.

(a) An administrative review is available under the following circumstances:

(1) an applicant or recipient receives notice of a proposed action; or

(2) a provider receives notice of an administrative sanction, conflict, or denied claim.

(b) No later than 20 business days after the date of notice of the action, conflict, sanction, or claim denial, the aggrieved person may request an administrative review. The request must be made in writing and received by the OHP within the required timeframe. Additional information bearing on the decision to be reviewed may be submitted at this time. Failure to make a timely request for an administrative review is deemed to be a waiver of the right to administrative review.

(c) Upon timely receipt of a request for an administrative review, an administrative review team will review and consider all relevant materials submitted by the program and the aggrieved person. The administrative review team will affirm or reverse the decision being appealed and respond in writing to the aggrieved person, giving the reason(s) for the decision.

§49.17. Due Process Hearing.

(a) A due process hearing is available under the following circumstances:

(1) an applicant or recipient receives notice of a proposed action or an administrative review team decision that supports the department; or

(2) a provider receives notice of a conflict with the department or an administrative review team decision that supports the department regarding a conflict.

(b) A request for a due process hearing is not contingent upon initially requesting an administrative review. If a request for a hearing is made without first requesting an administrative review, the right to an administrative review is deemed to be waived.

(c) A request for a due process hearing must be made in writing and received by the OHP no later than 20 business days after the date of the notice or decision that the aggrieved person wants to appeal, as described in subsection (a) of this section. Failure to make a timely request for a due process hearing is deemed to be a waiver of the right to a due process hearing and the department's decision is upheld and implemented.

§49.18. Hearing Process.

(a) Upon receiving a written request for a due process hearing, the department will assign a hearing examiner who will set a date, time, and place for the hearing. The hearing will not be conducted under the contested case provisions of the Administrative Procedure Act, Texas Government Code, Chapter 2001, but will include the following:

(1) a written notice to the aggrieved person of the matters asserted and the basis for the proposed action or conflict;

(2) an opportunity for the aggrieved person to receive a fair hearing by a hearing examiner, either by telephone conference call or in person, under §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures);

(3) an opportunity for the aggrieved person to be represented by counsel or other representative;

(4) an opportunity for the aggrieved person or his/her representative to be heard in person, to call witnesses, and to present documentary evidence;

(5) an opportunity for the aggrieved person to cross-examine witnesses;

(6) a written recommendation by the hearing examiner to the commissioner, setting forth the reasons for the recommendation and the evidence upon which the recommendation is based; and

(7) the final written decision to be made by the commissioner.

(b) The department's administrative decision is final in a due process hearing and is not subject to further appeal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 2, 2008.

TRD-200802834

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: July 13, 2008

For further information, please call: (512) 458-7111 x6972



CHAPTER 421. HEALTH CARE INFORMATION

SUBCHAPTER D. COLLECTION AND RELEASE OF OUTPATIENT SURGICAL AND RADIOLOGICAL PROCEDURES AT HOSPITALS AND AMBULATORY SURGICAL CENTERS

25 TAC §§421.61 - 421.68

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§421.61 - 421.67, and new §421.68 concerning the collection and release of patient level data relating to patients that have surgical procedures or radiological procedures (under specified revenue codes) performed in Texas hospitals (as an outpatient service including in the emergency department) or ambulatory surgical centers.

BACKGROUND AND PURPOSE

Sections 421.61 - 421.67 relate to the collection and release of ambulatory surgical care and emergency department data on reporting hospitals. The sections were previously adopted as a voluntary submission process to the department. The department did not collect any data from hospital outpatient services or emergency department services because grant funds were requested, but not awarded to the department for this data collection. The rules were originally developed and adopted by the Texas Health Care Information Council (council) and were transferred to the Department of State Health Services on September 1, 2004, as a result of the consolidation of health and human

services agencies under House Bill 2292 (HB 2292), 78th Texas Legislature, 2003.

The proposed rules are necessary to comply with Sections 2 and 3, Senate Bill 1731 (SB 1731), 80th Texas Legislature, 2007, amending the Health and Safety Code, Chapter 108. Chapter 108 requires the Executive Commissioner to adopt rules to implement the collection and release of data from health care facilities. Section 2 added "free-standing imaging center" to the list of facilities included under the term "Health Care Facility" in Health and Safety Code, §108.002(10), thereby authorizing the department to collect data from free-standing imaging centers which are neither defined nor licensed by the state. Section 3 amended Health and Safety Code, §108.009(k), and established the prioritization of data collection efforts for the department as "inpatient and outpatient surgical and radiological procedures from hospitals, ambulatory surgical centers, and free-standing radiology centers." The proposed amendments and new section do not address or include language requiring the collection of data from free-standing imaging centers, but does require submission of select revenue codes that include surgical and radiological procedures from hospitals and ambulatory surgical centers. The proposed amendments to §§421.61 - 421.67 establish rules regarding the submission, correction, certification requirements and the new §421.68 provides rules regarding the release specifications of select revenue codes which cover surgical procedures or radiological procedures occurring in hospitals or ambulatory surgical centers.

Health and Safety Code, §108.009(h), requires the department to accept data in data submission formats used by hospitals and other providers and to use the format developed by the National Uniform Billing Committee (Uniform Hospital Billing Form UB 92) and HCFA-1500 (Health Care Financing Administration Form 1500) or their successors or other universally accepted standardized forms. The UB 04 is the successor to the UB 92 and the CMS-1500 (Centers for Medicare and Medicaid Services Form 1500) is the successor to the HCFA-1500. These are paper forms of the patient claims, CMS has discouraged the use and submission of paper based claims. The federal government, CMS and the State of Texas have encouraged the submission of electronic data, including Medicare claims as a result of the regulations and amendments to the Paperwork Reduction Act, Printing Act, and the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Public Law 103 - 40), which have extended the definition of government publications beyond paper formats. The proposed amendments require hospitals and ambulatory surgical centers to submit data in HIPAA (Health Insurance Portability and Accountability Act of 1996, Public Law 104 - 191, 104th Congress) compatible formats, which are modified to collect patient race and ethnicity. The current accepted standardized forms are approved through federal transaction and code sets regulations under HIPAA. Those versions are the American National Standards Institute, Accredited Standards Committee X12N, 837 Health Care Institutional Claim Implementation Guide (ANSI 837 Institutional Guide) and American National Standards Institute, Accredited Standards Committee X12N, 837 Health Care Professional Claim Implementation Guide (ANSI 837 Professional Guide). The current approved version of the ANSI 837 Institutional Guide is Version 4, Release 1, Sub-release 0, Transmission Type X096 with Addendum 1, 004010X096A1, and the approved version for the ANSI 837 Professional Guide is 004010X098A1.

Health and Safety Code, §108.009(k) requires the department to collect health care data elements relating to the racial and ethnic

background of patients. These data elements are not routinely collected or reported on the standardized claim forms. The current HIPAA compliant 4010A1 versions of ANSI 837 Institutional Guide and ANSI 837 Professional Guide have a data element field listed for Race or Ethnicity Code (DMG05), and it is marked as "Not Used" (for billing) in the manuals printed by the Washington Publishing Company. The ANSI 4010A1 data translators (software that reads and interprets the code) only allow for one character in the field. The department requires for hospital inpatient data submissions under §421.9(c)(1) of this title that the "Race Code" be submitted in this location. The patient ethnicity code is reported in the NTE02 data field for hospital inpatient data under §421.9(c)(2) of this title, which is marked as a "Situational" (submission is required sometimes and dependent upon additional criteria) data field.

In the proposed amendment, the department will collect race and ethnicity by requiring the same codes and locations as required by the current hospital inpatient data submission rules. The department has not received or heard of any reported incidences of claims rejected for facilities submitting to third party payers that included these data elements on the billing claim. The department anticipates modifying the rules regarding the collection of the patient race and ethnicity codes after federal approval of other versions of the ANSI 837 Institutional Guide or ANSI 837 Professional Guide. The next versions will expand the number of characters because the United States Office Management and Budget (OMB) recommended that multiple race codes be allowed and collected for data analysis. The proposed amendments allow for matching to the code set recommended by OMB, except that Hawaiian - Pacific Islanders are included with the Asian race code (2). The latest United States Census information (2006) indicates that Hawaiian - Pacific Islanders are approximately 0.1 percent of the Texas population (<http://quickfacts.census.gov/qfd/states/48000.html>). The department anticipates expanding the list in the future to include all federally approved codes. Expansion of the list will allow facilities to be more precise in their reporting and will allow the data to be classified into the more basic categories as research requires or allows.

Health and Safety Code, §108.009(i), requires the department to develop reasonable alternate data submission procedures for providers that do not possess electronic data processing capacity. The department knows of no facilities that are without electronic data processing capabilities. One facility reported that they did not have an electronic billing system. Several facilities have expressed concern that they do not have the ability to transfer data over the secured Internet connections or direct connections with the department's contract vendor who receives and processes the data. The department's contract vendor will provide free data entry software that can be utilized by the facilities to create an electronic data submission file that can be encrypted and placed on electronic media, (e.g., CD (Computer Disk), or other department approved portable electronic media), that can be mailed to the contract vendor or transferred via telephone using a computer MODEM (Modulator/demodulator - an electronic device for converting between serial data from a computer and an audio signal suitable for transmission over a telephone line connected to another modem).

The definition of "public use data" in Health and Safety Code, Chapter 108, requires that the data be severity and risk adjusted. The department is not aware of any severity and risk adjustment methodology software for outpatient data that assigns risk and severity scores to outpatient data for public data release. The department has investigated three products from 3M™, the "Am-

bulatory Patient Classification" (APC) software, Ambulatory Patient Group (APG) software and Clinical Risk Group (CRG) software and one product from the Agency for Healthcare Research and Quality (AHRQ) has a Clinical Classifications Software and each provide adjustment information regarding outpatient data that can be useful to the public, policy makers and health data researchers. Therefore, those data elements are included in the list of data elements to be included in the public use data file in new §421.68. The department requests that commenters submit recommendations regarding such methodologies or procedures.

Health and Safety Code, §108.009, requires providers to submit data as required by these sections. The HIPAA privacy regulations at 45 Code of Federal Regulations, §164.512(a), allow health care providers to disclose protected health information without a patient's consent or authorization when disclosure is required by law. Since state law requires disclosure to the department, the HIPAA regulations allow the submission of the data.

The data cannot be required to be submitted to the department before the 90th day after the date the rules are adopted and must take effect not later than the first anniversary after the date the rules are adopted.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 421.61 - 421.67 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

In response to the consolidation of the council into the department, the term "Council" is replaced with the term "DSHS" throughout the sections and the referenced section numbers are updated throughout to reflect the numbers assigned when the rules were transferred to the department in 2004.

Throughout the sections the term "reporting hospital" is replaced with "facility" and "reporting hospitals" replaced with "facilities."

Section 421.61, Definitions, is amended by adding the following new terms and definitions to clarify new language: "Ambulatory surgical center," "Anesthetized patient," "ANSI 837 Professional Guide," "APG," "CRG," "Other Provider," "Outpatient," "Referring Provider" or Referring Other Health Professional," and "Rendering Provider" or "Rendering Other Health Professional."

The following terms and definitions were deleted because the terms were deleted from this subchapter are no longer used or necessary: "Attending physician," "Council," "CPT," "Discharge," "DRG," "Executive Director," "Panel," "Reporting hospital," "Scientific Review Panel" and "TDH."

The following term descriptions are amended: "Certification file" adds a clarifying statement regarding the contents of the file; "Certification Process" updates the title of the reference section; "Clinical Classifications Software" adds clarifying language regarding the developer of the software; "Event claim" removes the section title name of the reference section and adds reference to the ANSI 837 Professional Guide; "Event file" removes the section title name of the reference section and adds the phrase "and ANSI 837 Professional Guide" as a reference for the terms usage; "Facility" adds ambulatory surgical centers to hospitals as being required to report under this subchapter; "Facility Type Indicators" adds ambulatory surgical centers to the list of indi-

cators which provide information to the data user regarding the type of health services provided by the facility; "Geographic identifiers" changes the phrase "public health region" to "health service region" in response to departmental terminology for the region; "HCPCS" updates changes at the United States Department of Health and Human Services and adds a clarifying statement that "Current Procedural Terminology" (CPT) codes which are maintained by the American Medical Association (AMA) are "Level 1" HCPCS codes; "Hospital" updates the referenced section; "IRB" adds clarifying language regarding the composition of the IRB and their role regarding release of outpatient event data; "Operating or Other Physician" updates agency name and adds the phrase "or radiological" between "surgical" and "procedure"; in "Physician" the Latin phrase "et seq." is added to the legal citation; "Public use data file" adds the phrase "For the purposes of this subchapter" to the description and removes the reference to ambulatory surgical care and emergency department, because the subchapter addresses the types of data in the file; "Required minimum data set" adds clarifying language about the ANSI 837 Institutional Guide and ANSI 837 Professional Guide, updates the referenced sections and removes language that is no longer necessary; "Research data file" updates language to the current policy regarding research data release; "Submission" updates referenced rule section and removes the title name in accordance with administrative format guidelines; in "THCIC Identification Number" a clarifying statement is added regarding the assignment of the distinguishable identifier for multiple location facilities under one license number; and, "Uniform physician identifier" adds clarifying language regarding the assignment of a uniform physician identifier for this title.

Section 421.62 is amended to include hospital outpatient and ambulatory surgical center data. Hospitals and ambulatory surgical centers will be required to report data to the department. The data to be reported will be determined by what surgical procedures or radiological services are covered by the revenue codes specified in §421.67(f) and were received by a patient of the facility. Also, the sectioned names in the referenced rules are revised to reflect the correct rule information and administrative format guidelines.

Section 421.63(a) is amended to use defined terms regarding outpatient data submission. Section 421.63(b) is amended to clarify that a delay in the due date requirements is allowed upon a timely written request until the department renders a decision regarding the delay request.

Section 421.64 is amended to revise the section name of the referenced section in accordance with administrative format guidelines. An alternative data submission method is added for submitting the required minimum data set on events required by this chapter. This alternative method requires that the facilities and the media be approved by the department prior to submission of the data file.

Section 421.65 is amended to revise section names of referenced sections in accordance with administrative format guidelines.

Section 421.66(c)(3) is amended to state which outpatient data is being certified by the facility and rule references were revised.

Section 421.67(a) is amended to specify that data could be submitted in either the modified ANSI 837 Institutional Guide format or the ANSI 837 Professional Guide format. The department intends to follow as closely as possible the HIPAA transaction and code set guidelines as allowable in order to fulfill the mandate

in Health and Safety Code, Chapter 108, to use accepted standardized formats.

Section 421.67(c) is amended to include the ANSI 837 Professional Guide as a valid data format for submitting the required data elements to DSHS and clarify that the format may change in response to changes in state law or federal legislative or federal regulation requirements. A clarifying statement is added in §421.67(c)(3) for the submission of External Cause of Injury codes (E-codes) in the ANSI 837 Professional Guide. In §421.67(c)(4)(C) clarifying language is added to reference the corresponding Loops in the ANSI 837 Institutional Guide and the ANSI 837 Professional Guide for the "Service Facility Provider" identification number.

Section 421.67(d) is amended to state the required minimum data set for facilities that provide one or more of the services that are included under the revenue codes specified in §421.67(f) of this title for patients which are uninsured, considered as self pay, or are covered by a third-party payer which requires the facility to submit a claim in an ANSI 837 Institutional Guide format or CMS-1450 format.

Section 421.67(e) specifies the required minimum data set for facilities that provide one or more of the services that are included under the revenue codes specified in §421.67(f) of this title for patients for whom the third-party payer requires the claim to be submitted in the ANSI 837 Professional Guide format or the CMS-1500 format. Language is added to provide a facility the option of submitting to the department the required minimum data set specified in §421.67(d) instead of the modified ANSI 837 Professional Guide format.

Section 421.67(f) is added to specify revenue codes, which cover surgical and radiological procedures of outpatients whose data shall be submitted to the department in compliance with this subchapter.

New §421.68 establishes rules regarding the protection of patient and physician identifying data and release of event data collected under this subchapter as mandated by Health and Safety Code, Chapter 108.

FISCAL NOTE

Ramdas Menon, Ph.D., Director, Center for Health Statistics, has determined that for each calendar year of the first five years that the sections are in effect, there will be fiscal implications to the state as a result of enforcing or administering the sections as proposed. The effect on state government will be a one time cost to the department of \$486,000 for development and modification of the current health care data collection system (data file format, file structures, logs, reports and three associated data software tools) and the University of Texas Medical Branch at Galveston (UTMB) stated a one time cost of \$10,000 for programming to submit the data as required by the proposed rule. The following four years there will be \$1,516,297 (average of \$379,000 per year, including a three percent increase per year) additional costs to the department. The Texas Center for Infectious Disease stated that there would be \$350 per year in additional costs: Harris County Psychiatric Center stated no additional costs would be incurred. The other state facilities provided no estimate of costs.

The fiscal implications of submitting the patient level data for the surgical procedures or radiological procedure codes covered by the specified revenue codes in §421.67(f) and associated data as proposed for local governments that own or operate hospi-

tals or ambulatory surgical centers will vary dependent on the complexity of the hospital's or ambulatory surgical center's information technology and contract requirements with any vendors involved in their information systems process. No cost estimates were received from local government entities. The department estimates that costs for local government entities may range from no additional costs up to a similar one-time cost of \$10,000 as submitted by UTMB.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS AND ECONOMIC IMPACT TO PERSONS

Dr. Menon anticipates that those hospitals or ambulatory surgical centers required to report under Health and Safety Code, Chapter 108, and these sections will incur costs dependent upon the complexity and status of their information systems. Hospitals and ambulatory surgical centers that do not collect racial and ethnic background information on their patients who receive the surgical services or radiological services covered under the revenue codes specified in the sections or do not submit data electronically will incur additional costs dependent on the complexity of their information technology system. Rural hospitals are exempt from reporting; therefore, rural hospitals that might qualify as a small business or micro-business are not included in this analysis.

Based on licensure records held by the department and department staff knowledge of hospitals and ambulatory surgical centers in Texas, the department believes that the number of hospitals and ambulatory surgical centers (ASC) that are small businesses (for-profit, independently owned, and under 100 employees or under \$6 million in annual gross receipts) is approximately 170. The department is not aware of any hospitals (not including rural hospitals) that are micro-businesses (for-profit, independently owned, and under 20 employees). The department believes that the number of ambulatory surgical centers that are small businesses or micro-businesses is approximately 69.

Dr. Menon anticipates that hospitals and ambulatory surgical centers that are required to submit data will modify or have modified their computer systems to capture and submit the data. The hospitals and ambulatory surgical centers that are small businesses or micro-businesses that contract with a vendor or have built a computer system that is separate from their billing system will incur varying costs. These costs depend upon the complexity of their systems and contract requirements with any vendors involved with the hospital's or ambulatory surgical center's information technology systems for submitting the data, in particular the racial and ethnic background indicator codes as proposed.

Licensed hospitals and ambulatory surgical centers were contacted, several ambulatory surgical centers, which are small businesses or micro-businesses provided a cost estimate as requested by the department. Two facilities responded that there would be no significant costs. One facility responded that it would cost about \$40,500 for hardware and software to comply with the requirements in the proposed rules, because their current software system did not collect many of the data elements proposed. The cost estimate included a new server and new software, but did not include programming costs to collect ethnicity. One facility stated their vendor costs would be \$500 for first year and \$200 in maintenance costs. One facility reported a one-time cost of \$3,000 and minimal ongoing costs. One facility responded that they would incur costs from \$3000 to \$4000. One facility provided a cost estimate of \$5,500 for initial development and \$11,856 for annual costs to report the required data to the data under the proposed amendments.

One facility reported that it would require \$9,800 for a software upgrade and \$4,500 for printing and storing the new form to collect race/ethnic data elements, and training for staff, and an annual maintenance charge of \$1,700 and \$5,500 for the office manager to verify and correct the data. One facility responded that they would have a one-time cost of \$16,000 and annual costs of \$16,000. One facility responded they would have one time cost of \$17,500. One facility reported that it would cost them \$50,000 for the first year and \$35,000 each year thereafter, citing they would need to hire a person just to collect and submit the data. One ambulatory surgery center estimated that it would cost \$65,000 the first year with \$40,000 in annually for personnel and maintenance costs to comply with the proposed amendments. One facility provided a cost estimate of \$220,000 stating it is to upgrade their server and computer network to handle the software applications and they would require \$125,000 in personnel and maintenance costs; however the costs appear to include much more than is required by the proposed rules. For example, the cost estimate appears to include a new server and network that the department does not believe would be necessitated because of the rules. The department is unable to determine how much of this cost estimate relates directly to implementation of the rules as proposed. The small hospitals contacted did not provide any cost estimates or did not meet the criteria of a small business or micro-business. Based on this information, the department estimates that the economic impact of the sections on hospitals and ambulatory surgical centers that are small businesses or micro-businesses will range from no additional costs to an estimated \$65,000 for first year costs with approximately \$40,000 per subsequent year on personnel and maintenance costs.

The department considered alternative methods of achieving the purposes of the proposed sections. The purposes of the sections could be broadly stated as enhancing the ability of the state and the department to collect data for analysis to assist the public in making informed choices when selecting a hospital or ambulatory surgical center for services. One alternative could be to not collect the outpatient data that will be required by these sections; in other words, not propose or adopt any new sections or amendments to these sections. Under that alternative, the department would continue to only collect the inpatient hospital data that it currently collects. While this alternative would provide the public with the current data to help the public make choices, it would not provide any new data to the public on hospital outpatient services and would provide no data on ambulatory surgical center services. In addition SB 1731 mandated prioritization of data collection efforts of the department as to inpatient and outpatient surgical and radiological procedures from hospital, ambulatory surgical centers, and free-standing radiology centers. The Texas Legislature appropriated funds for additional data collection, which funds are estimated by the department to be sufficient for the outpatient data collection and analysis mandated by these sections for hospitals and ambulatory surgical centers. This alternative was not accepted.

Another alternative could be to collect only hospital outpatient data but not ambulatory surgical center outpatient data. While this alternative would provide the public with the current data to help the public make choices and new data on hospital outpatient services, it would not provide any data on ambulatory surgical center services. In addition SB 1731 mandated prioritization of data collection efforts of the department as to inpatient and outpatient surgical and radiological procedures from hospital, ambulatory surgical centers, and free-standing radiology

centers. The Texas Legislature appropriated funds for additional data collection, which funds are estimated by the department to be sufficient for the outpatient data collection and analysis mandated by these sections for hospitals and ambulatory surgical centers. This alternative was not accepted.

A third alternative could be to collect data based on procedures codes, rather than revenue codes. In meetings and discussions with stakeholders representing hospitals and ambulatory surgical centers, the department was requested by the stakeholders to use revenue codes because revenue codes would change fewer times than procedure codes and require fewer rule amendments and information system changes. Use of either type of codes would meet the purposes of these sections. The alternative of using procedures codes was not accepted because of the stated preference of the stakeholders.

The anticipated economic costs to persons (hospitals or ambulatory surgical centers that are required to report under Health and Safety Code, Chapter 108) who are required to comply with the sections as proposed will be dependent upon the complexity and status of their information systems and will range from no additional costs to an estimated \$65,000 for the first year. The annual costs thereafter would range from zero to \$40,000.

There will be little effect on local employment. The department assumes that any person hired would be hired in the first year that the rules are in effect. No additional local employment is anticipated in the subsequent years. Several facilities stated they would need to hire one full time person to collect and submit the data.

PUBLIC BENEFIT

Dr. Menon has also determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the amended sections. The public benefit anticipated as a result of collecting and reporting of this data is the ability to provide the public with data and information regarding the type of surgical services or radiological services, volume, average charges, and the complexity of patient services provided by the hospitals or ambulatory surgical centers. The public will benefit from health care provider reports and information about the quality of care being provided by hospital outpatient surgical services and ambulatory surgical centers. The standardized data and the reports and information developed by the department from the data will assist the consumer in making informed decisions on healthcare issues. The public will also benefit by having these rules updated to reflect the current organization of the department.

REGULATORY ANALYSIS

The department has determined that the proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. The proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed rules do not restrict or limit an owner's right to his or her property that

would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Bruce M. Burns, D.C., Center for Health Statistics, Department of State Health Services, Mail Code - 1898, P.O. Box 149347, Austin, TX 78714-9347, Fax (512) 458-7740. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendments and new rule are authorized by Health and Safety Code, §§108.006, 108.009, 108.010, 108.011 and 108.013, which require the Executive Commissioner to adopt rules necessary to carry out Chapter 108 including rules on data collection requirements, to prescribe the process of data submission, to implement a methodology to collect and disseminate data reflecting provider quality, to specify data elements to be required for submission to the department and which data elements are to be released in a outpatient event public use data file; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The proposed amendments and new rule affect the Health and Safety Code, Chapters 108 and 1001; and Government Code, Chapter 531.

§421.61. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Ambulatory Surgical Care Data--Data for events associated with facility [reporting hospital] services, which require surgery to be performed in an operating room on an anesthetized patient.

(3) Ambulatory surgical center--An establishment licensed as an ambulatory surgical center under the Health and Safety Code, Chapter 243.

(4) Anesthetized patient--For the purposes of this subchapter, an outpatient who receives an anesthetic (a substance that reduces sensitivity, feeling, or awareness to pain or bodily sensations or renders the patient unconscious) prior to surgical services from a hospital or ambulatory surgical center.

(5) [(3)] ANSI 837 Institutional Guide--American National Standards Institute, Accredited Standards Committee X12N, 837 Health Care Institutional Claim Implementation Guide.

(6) ANSI 837 Professional Guide--American National Standards Institute, Accredited Standards Committee X12N, 837 Health Care Professional Claim Implementation Guide.

(7) [(4)] APC--Ambulatory Payment Classification.

(8) APG - Ambulatory Patient Group (APG)--A prospective payment system (PPS) for hospital-based outpatient care developed by 3M™. APGs provide information regarding the kinds and amounts of resources utilized in an outpatient visit and classify patients with similar clinical characteristics.

[(5) Attending Physician--The individual licensed under the Medical Practice Act (Occupations Code, Chapter 151) who would normally be expected to certify and recertify the medical necessity of the services rendered during the hospital episode.]

(9) [(6)] Audit--An electronic standardized process developed and implemented by DSHS to identify potential errors and mistakes in file structure format or data element content by reviewing data fields for the presence or absence of data and the accuracy and appropriateness of data.

(10) [(7)] Certification File--One or more electronic files (may include reports concerning the data and its compilation process) compiled by DSHS that contain one record for each patient event which has at least one procedure covered in the revenue codes specified in §421.67(f) of this title (relating to Event Files--Records, Data Fields and Codes) submitted for each facility [reporting hospital] under this subchapter during the reporting quarter and may contain one record for any patient event occurring during one prior reporting quarter for whom additional event claims have been received.

(11) [(8)] Certification Process--The process by which a provider confirms the accuracy and completeness of the certification file required to produce the public use data file as specified in §421.66 [§1301.66] of this title (relating to Certification of Compiled Event Data).

(12) [(9)] Charge--The amount billed by a provider for specific procedures or services provided to a patient before any adjustment for contractual allowances, government mandated fee schedules or write offs for charity care, bad debt or administrative courtesy. The term does not include co-payments charged to health maintenance organization enrollees by providers paid by capitation or salary in a health maintenance organization.

(13) [(10)] Clinical Classifications [Classification] Software--A classification system that groups diagnoses and procedures into a limited number of clinically meaningful categories developed at the United States Department of Health and Human Services, Agency for Healthcare Research and Quality (AHRQ).

(14) CRG--Clinical Risk Grouping software which classifies individuals into mutually exclusive categories and, using claims data, assigns the patient to a severity level if they have a chronic health condition. Developed by 3M™ Corporation.

(15) [(11)] Comments--The notes or explanations submitted by the facilities [reporting hospitals], physicians or other health professionals concerning the provider quality reports or the encounter data for public use as described in the Texas Health and Safety Code, §108.010(c) and (e) and §108.011(g) respectively.

[(12) Council--The Texas Health Care Information Council, until the abolition of the Council, the Department of State Health Services after abolition of the Council.]

[(13) CPT--Current Procedural Terminology.]

(16) [(14)] Data format--The sequence or location of data elements in an electronic record according to prescribed specifications.

[(15) Discharge--The formal release of a patient by a physician authorized to practice in a reporting hospital ambulatory surgical unit or emergency department; that is, the termination of a period of

medical services by death or by disposition to a residence or another health care provider.]

(17) [(46)] DSHS--Department of State Health Services, the successor state agency to the Texas Health Care Information Council and the Texas Department of Health.

[(17) DRG--Diagnosis Related Group.]

(18) - (19) (No change.)

(20) Emergency Department--Department or room within a [reporting] hospital as determined by federal or state law for the provision of emergency health care.

(21) - (22) (No change.)

(23) Ethnicity--The status of patients relative to Hispanic background. Facilities [Reporting hospitals] shall report this data element according to the following ethnic types: Hispanic or Non-Hispanic.

(24) Event--The medical screening examination, triage, observation, diagnosis or treatment of a patient within the authority of a facility [reporting hospital].

(25) Event claim--A set of computer records as specified in §421.67 [§4301.68] of this title [(relating to Event Files--Records, Data Fields and Codes)] relating to a specific patient. "Event claim" corresponds to the ANSI 837 Institutional Guide and ANSI 837 Professional Guide term, "Transaction set."

(26) Event file--A computer file as defined in §421.67 [§4301.68] of this title [(relating to Event Files--Records, Data Fields and Codes)] periodically submitted on or on behalf of a facility [reporting hospital] in compliance with the provisions of this subchapter. "Event File" corresponds to the ANSI 837 Institutional Guide and ANSI 837 Professional Guide terms, "Communication Envelope" or "Interchange Envelope."

[(27) Executive director--The chief administrative officer of the Council or of the department designated by the Department of State Health Services to perform the functions of the Council.]

(27) [(28)] Facility--For the purposes of this subchapter a facility is a [reporting] hospital or ambulatory surgical center, required to report under the Health and Safety Code, Chapter 108 and this subchapter.

(28) [(29)] Facility Type Indicators--An indicator that provides information to the data user as to the type of facility or the primary health services delivered at that [reporting] hospital (e.g., Hospital based ambulatory surgical unit and hospitals with an emergency department or emergency room) and ambulatory surgical centers. A facility [hospital] may have more than one indicator.

(29) [(30)] Geographic identifiers--A set of codes indicating the [public] health service region and county in which the patient resides.

(30) [(34)] HCPCS--Healthcare [HCFA's] Common Procedure Coding System of the [(HCFA Health Care Finance Administrations (Now called) Centers for Medicare and Medicaid Services)]. This includes the "Current Procedural Terminology" (CPT) codes (maintained by the "American Medical Association" (AMA)), which are "Level 1" HCPCS codes.

(31) [(32)] HIPPS--Health Insurance Prospective Payment System.

(32) [(33)] Hospital--A public, for-profit, or nonprofit institution licensed as a general or special hospital (25 TAC, §133.2(21)) of this title [(25 TAC §133.2(22)(52))], or a hospital owned by the state.

(33) [(34)] ICD--International Classification of Disease.

(34) [(35)] IRB--Institutional Review Board composed of DSHS' appointees or agents who have experience and expertise in ethics, patient confidentiality, and health care data who review and approve or disapprove requests for data or information other than the outpatient event public use data.

(35) [(36)] Operating or Other Physician--The "physician" licensed by the Texas Medical Board [Texas State Board of Medical Examiners], or "other health professional" licensed by the State of Texas who performed the principal procedure or performed the surgical or radiological procedure most closely related to the principal diagnosis.

(36) [(37)] Other health professional--A person licensed to provide health care services other than a physician. An individual other than a physician who provides diagnostic or therapeutic procedures to patients. The term encompasses persons licensed under various Texas practice statutes, such as psychologists, chiropractors, dentists, nurse practitioners, nurse midwives, and podiatrists who are authorized by the facilities [reporting hospital] to examine, observe or treat patients.

(37) Other Provider--For the purposes of reporting on the modified ANSI 837 Institutional Guide, the physician or other health professional who performed the principal surgical or radiological procedure on the patient for the event if they are not reported as the operating physician or other physician. In the case where a substitute provider (locum tenens) is used, that physician or other health professional shall be submitted as specified in this subchapter.

(38) Outpatient or patient--For the purposes of this subchapter a patient who receives surgical or radiological services from an ambulatory surgical center or a patient who receives surgical or radiological services from a hospital and is not admitted to a hospital for inpatient services. Outpatients include patients who receive one or more services covered by the revenue codes that are specified in §421.67(f) of this title, which may occur in the emergency department, ambulatory care, radiological, imaging or other types of hospital units. Outpatient includes a patient who is transferred from an ambulatory surgical center to another facility or a hospital patient who is under observation and not admitted to the hospital.

[(38) Panel--Scientific Review Panel.]

(39) Patient account number--A number assigned to each patient by the facility [hospital], which appears on each computer record in a patient event claim. This number is not consistent for a given patient from one facility [hospital] to the next, or from one admission to the next in the same facility [hospital]. DSHS will delete or encrypt this number to protect patient confidentiality prior to release of data.

(40) Physician--An individual licensed under the laws of this state to practice medicine under the Medical Practice Act, Occupations Code, Chapter 151 et seq.

(41) Provider--For the purposes of this subchapter, a physician or facility [reporting hospital].

(42) Public use data file--For the purposes of this subchapter, a [A] data file composed of event claims which have been altered by the deletion, encryption or other modification of data fields to protect patient and physician confidentiality and to satisfy other restrictions on the release of [ambulatory surgical care and emergency department] data imposed by statute.

(43) ~~Race--~~A division of patients according to traits that are transmissible by descent and sufficient to characterize them as distinctly human types. ~~Facilities [Reporting hospitals]~~ shall report this data element according to the following racial types: American Indian, Eskimo, or Aleut; Asian or Pacific Islander; Black; White; or Other.

(44) ~~Referring provider or referring other health professional--~~The physician or other health professional or facility that referred the patient for the principal procedure or event. For purposes of this definition, the term "provider" is not limited to only a physician, or facility as defined in paragraphs (27), (37) and (41) of this section. For purposes of this definition, the term "facility" means any health care facility entity, or office not just a hospital or ambulatory surgical center as defined in paragraph (27) of this section.

(45) ~~Rendering provider or rendering other health professional--~~For the purposes of reporting on the modified ANSI 837 Professional Guide, the physician or other health professional who performed the surgical or radiological procedure on the patient for the event. In the case where a substitute provider (locum tenans) is used, that physician or other health professional shall be submitted as specified in this subchapter. For purposes of this definition, the term "provider" is not limited to only a physician, or facility as defined in paragraphs (27), (37) and (41) of this section.

~~[(44) Reporting hospital--A public, for-profit, or nonprofit institution licensed or owned by this state as a general or special hospital or a hospital owned by the state that volunteers to participate in the data collection, correction, certification and analysis process specified in this subchapter.]~~

(46) ~~[(45)]~~ Required minimum data set--The list of data elements for which facilities ~~[reporting hospitals]~~ may submit an event claim for each patient event occurring in the facility [hospital]. The required minimum data sets are ~~[set is]~~ specified in §421.67(d) and (e) ~~[\$1301.68(d)]~~ of this title ~~[(relating to Event Files--Records, Data Fields and Codes)]~~ and is only required if the hospital chooses to participate in reporting under this subchapter. This list does not include all the data elements that are required by the modified ANSI 837 Institutional Guide or modified ANSI 837 Professional Guide to submit an acceptable event file. For example: Interchange Control Headers and Trailers, Functional Group Headers and Trailers, Transaction Set Headers and Trailers and Qualifying Codes (which identify or qualify subsequent data elements).

(47) ~~[(46)]~~ Research data file--A customized data file, which may include [includes] the data elements in the public use file and may include data elements other than the required minimum data set submitted to DSHS, except those data elements that could reasonably identify a patient or physician.

~~[(47) Scientific Review Panel--DSHS' appointees or agent who have experience and expertise in ethics, patient confidentiality, and health care data who review and approve or disapprove requests for data or information other than the public use data.]~~

(48) ~~Submission--~~The transfer of a set of computer records as specified in §421.67 ~~[\$1301.68]~~ of this title ~~[(relating to Event Files--Records, Data Fields and Codes)]~~ that constitutes the event file for one or more reporting hospitals under this subchapter.

(49) ~~Submitter--~~The person or organization, which physically prepares an event file for one or more facilities [reporting hospitals] and submits them under this subchapter. A submitter may be a facility [hospital] or an agent designated by a facility [hospital] or its owner.

~~[(50) TDH--Texas Department of Health, or its successor agency, the Department of State Health Services.]~~

(50) ~~[(51)]~~ THCIC Identification Number--A string of 6 characters assigned by DSHS to identify facilities [hospitals] for reporting and tracking purposes. For a facility operating multiple facility locations under one license number and duplicating services at those locations, the department will assign a distinguishable identifier for each separate facility location under one license number. The relationship of the identifier to the name and license number of the facility is public information.

(51) ~~[(52)]~~ Uniform patient identifier--A unique identifier assigned by DSHS to an individual patient and composed of numeric, alpha, or alphanumeric characters, which remains constant across facilities [hospitals] and patient events. The relationship of the identifier to the patient-specific data elements used to assign it is confidential.

(52) ~~[(53)]~~ Uniform physician identifier--A unique identifier assigned by DSHS ~~[the Council]~~ to a physician or other health professional who is reported as referring, operating, rendering or other provider providing health care services [attending] or treating a patient in a facility [hospital] and which remains constant across facilities [hospitals]. The relationship of the identifier to the physician-specific data elements used to assign it is confidential. The uniform physician identifier shall consist of alphanumeric characters.

(53) ~~[(54)]~~ Validation--The process by which a provider verifies the accuracy and completeness of data and corrects any errors identified before certification.

§421.62. Collection of Hospital Outpatient and Ambulatory Surgical Center [Care and Emergency Department] Data.

(a) Each facility [Reporting hospitals] in operation for all or any of the reporting periods described in §421.63 ~~[\$1301.63]~~ of this title (relating to Schedule for Filing Event Files) shall ~~[may]~~ submit to DSHS event claims as specified in §421.67 ~~[\$1301.68]~~ of this title (relating to Event Files--Records, Data Fields and Codes) on all patient events in which the patient received one or more of the surgical procedures or radiological services covered by the revenue codes specified in §421.67(f) of this title ~~[to DSHS]~~. All facilities that are exempt under the Health and Safety Code, §108.0025, but choose ~~[if a hospital chooses]~~ to participate in reporting under this subchapter, ~~[the hospital]~~ shall comply with the requirements in this subchapter. To the extent the medical screening examination, triage, observation, diagnosis or treatment is made by a health professional, other than a physician, data elements specified in §421.67(d)(29) - (34) or (e)(24) ~~[\$1301.68(d)(31)-(36)]~~ of this title shall be filled accordingly or data elements in §421.67(d)(30) ~~[\$1301.68(d)(33)]~~ or (33) ~~[(36)]~~ in the modified ANSI 837 Institutional Guide or §421.67(e)(25) in the modified ANSI 837 Professional Guide shall be marked with one of DSHS approved temporary "Physician" or "Other health professional" code numbers and data elements in §421.67(d)(29)(A) - (C) ~~[\$1301.68(d)(31)(A-C)]~~ or (32)(A) - (C) ~~[(34)(A-C)]~~ in the ANSI 837 Institutional Guide format or §421.67(e)(24)(A) - (C) in the ANSI 837 Professional Guide format may be left blank.

(b) All patient events in which the patient received one or more of the surgical procedures or radiological services covered by the revenue codes specified in §421.67(f) of this title shall be reported by the facility that [reporting hospitals, for which the reporting hospital] prepares one or more bills for patient services. The facility [the reporting hospital] shall submit an event claim corresponding to each bill containing the data elements required by §421.67 [§1301.68] of this title [(relating to Event Files - Records, Data Fields and Codes)]. For all patients who received one or more of the surgical procedures or radiological services covered by the revenue codes specified in §421.67(f) of this title for which the facility [hospital] does not prepare a bill for patient services, the facility [hospital] shall submit an event claim containing the required minimum data set.

(c) Each facility ~~[All reporting hospitals]~~ shall submit event files by electronic filing unless the facility ~~[hospital]~~ receives an exemption letter from DSHS.

(d) Each facility ~~[All reporting hospitals]~~ shall submit event claims and event files in the format specified in §421.67 ~~[\$1301.68]~~ of this title ~~[(relating to Event Files--Records, Data Fields and Codes)]~~.

(e) Each facility ~~[All reporting hospitals]~~ shall submit event files, data certifications and other required information to DSHS or its agents at physical or telephonic addresses specified by DSHS. DSHS shall notify all facilities ~~[reporting hospitals]~~ and submitters in writing and by publication in the *Texas Register* at least 30 calendar days before any change in the addresses.

(f) Each facility ~~[Reporting hospitals]~~ may submit event files ~~[themselves]~~, or may designate an agent to submit the event files. If a facility ~~[hospital]~~ designates an agent, it shall inform DSHS of the designation in writing at least 30 calendar days prior to the agent's submission of any discharge report. The facility ~~[reporting hospital]~~ shall inform DSHS in writing at least 30 calendar days prior to changing agents or making the submissions itself.

§421.63. *Schedule for Filing Event Files.*

(a) For patient events ~~[discharges]~~ occurring on or after January 1, ~~2009~~ ~~[2006]~~, as specified by DSHS, facilities ~~[reporting hospitals]~~ shall file event files according to the following schedule as shown in paragraphs (1) - (4) of this subsection:

(1) - (4) (No change.)

(b) Extensions to processing due dates may be granted by DSHS in response to a written request signed by the facility's ~~[reporting hospital's]~~ chief executive officer. Requests must be in writing, must be received at least 5 working days prior to the due date and must be accompanied by adequate justification for the delay. A timely written request shall constitute a stay (delay) of the due date until a decision is issued by DSHS.

§421.64. *Instructions for Filing Event Files.*

(a) Electronic Data Interchange. Event files may be filed electronically ~~[by modem]~~ using electronic data interchange (EDI). All event files and event claims shall be reported using the same file and record formats specified in §421.67 ~~[\$1301.68]~~ of this title (relating to Event Files--Records, Data Fields and Codes) regardless of the medium of transmission. DSHS shall document instructions for filing event files by EDI and shall make this documentation available to facilities ~~[reporting hospitals]~~ at no charge and to the public for the cost of reproduction. DSHS shall notify facilities ~~[hospitals]~~ reporting under this subchapter and their designated agents directly in writing at least 90 calendar days in advance of any change in instructions for filing event files by EDI. DSHS' instructions shall follow Department of Information Resources standards for EDI.

(b) File Transfer Protocol (FTP). Event files may be filed by FTP using a Transmission Control Protocol over Internet Protocol (TCP/IP) Network connection. DSHS shall document instructions for filing event files by FTP and shall make this documentation available to facilities ~~[reporting hospitals]~~ at no charge and to the public for the cost of reproduction or on DSHS' Internet website. DSHS shall notify facilities ~~[hospitals]~~ reporting under this subchapter and their designated agents directly in writing at least 90 calendar days in advance of any change in instructions for filing event files by FTP. DSHS' instructions shall follow Department of Information Resources standards for FTP.

(c) Other Electronic or Magnetic Media. An event report may be filed on other electronic or magnetic media with prior written approval by DSHS. All events shall be reported using the same file and

record formats specified in §421.67 of this title regardless of medium. DSHS will not normally approve any medium, which the department or the DSHS contract vendor is not currently equipped to read at the time of the request for approval.

(1) Media specifications are:

(A) computer disk (CD): MS-DOS formatted; PC Text file (ASCII); or

(B) other electronic or magnetic media only with the prior written approval from the department.

(2) Facilities shall submit to DSHS only pre-approved media with the following external identification affixed:

(A) hospital name;

(B) facility identifier;

(C) reporting period for discharges;

(D) number of records by record type; and

(E) the description: "OUTPATIENT DATA."

(3) In addition to the provisions of this section, DSHS shall document instructions for filing discharge reports on electronic or magnetic media and shall make this documentation available to facilities at no charge and to the public for the cost of reproduction. DSHS shall notify facilities or their designated agents directly in writing at least 90 calendar days in advance of any change in instructions for filing event reports on electronic or magnetic media.

§421.65. *Acceptance of Event Files and Correction of Data Content Errors.*

(a) Upon receipt of an event file, DSHS shall establish a process to determine if it satisfies minimum criteria for processing. If it does not, DSHS shall establish a process to provide a report to be returned to the submitter regarding the invalid event file in a format and media that is approved for that provider and states the deficiencies. The facility ~~[reporting hospital]~~ shall submit a corrected event file within 10 calendar days of notification by DSHS or DSHS' agent. An event file does not meet minimum standards for processing if the file structure does not conform to the specifications in §421.67 ~~[\$1301.68]~~ of this title (relating to Event Files--Records, Data Fields and Codes).

(b) Correction of Data Content Errors.

(1) DSHS shall establish an audit process for all event files accepted for processing. DSHS shall notify the facility ~~[reporting hospital]~~ identified from the event file in detail of all errors detected in an event file which was received in an acceptable format as provided in §421.67 ~~[\$1301.68]~~ of this title ~~[(relating to Event Files - Records, Data Fields and Codes)]~~.

(2) Within 30 calendar days of receiving initial notice of errors in an event file, the facility ~~[reporting hospital]~~ shall correct all event claims containing errors, add any event claims determined to be missing from the initial event file and resubmit the corrected and/or previously missing event claims. If the facility ~~[reporting hospital]~~ disagrees with any identified error, the facility ~~[hospital]~~ may indicate that the event ~~[discharge]~~ claim is as accurate as it can be or cannot be corrected. Each facility ~~[reporting hospital]~~ shall submit such modified and/or additional event claims as may be required to allow the chief executive officer or the chief executive officer's designated agent to certify the quarterly event file as required by §421.66 ~~[\$1301.66]~~ of this title (relating to Certification of Compiled Event Data). Corrections to an ~~[a]~~ event file shall be submitted on approved media and formats as specified in §421.64 ~~[\$1301.64]~~ of this title (relating to Instructions for Filing Event Files) and §421.67 ~~[\$1301.68]~~ of this title ~~[(relating to~~

Event Files—Records, Data Fields and Codes)) unless DSHS approves another medium or format.

(3) Within 10 calendar days of receiving corrections to an event file from a facility [reporting hospital], DSHS shall notify the facility [reporting hospital] of any remaining errors. The facility [reporting hospital] shall have 10 calendar days from receipt of this notice to correct the errors noted or indicate why the data should be deemed acceptable and complete. This process may be repeated until the data is substantially accurate and the facility [reporting hospital] is able to certify the event file as required by §421.66 [§1301.66] of this title [(relating to Certification of Compiled Event Data)] or the deadline for submitting corrections prior to certification is reached. Corrected data is required to be submitted on or before the following dates for the respective quarter's discharges; Quarter 1 - August 1, Quarter 2 - November 1, Quarter 3 - February 1, Quarter 4 - May 1. DSHS may grant an extension to all facilities [hospitals with ambulatory surgical units or emergency departments] when deemed necessary.

(4) Event claims that have not been previously submitted shall be submitted prior to the deadline for the following quarter's data. Correction and certification of these previously missing or additional event claims for the prior calendar quarter shall be made according to the deadlines established for following quarter in which the data that is scheduled to be processed as specified in §421.63(a) [§1301.63(a)] of this title (relating to the Schedule for Filing Event Files), paragraph (3) of this subsection concerning the acceptance of event files and correction of data content errors), and §421.66(b) [§1301.66(b)] and (d) of this title [(relating to the Certification of Compiled Event Data)]. Corrections to event claims previously submitted or that have a statement [discharge] date prior to calendar quarter immediately before the calendar quarter being processed scheduled will not be processed.

(c) DSHS will document format acceptance criteria for event files. DSHS shall make this information available to submitters and facilities [reporting hospitals].

§421.66. Certification of Compiled Event Data.

(a) Within 5 months after the end of each reporting quarter, DSHS shall establish a process to compile one or more electronic data files for each facility [reporting hospital] using the event claims received from each facility [reporting hospital]. The certification file shall have one record for each patient event during the reporting quarter and one record for any patient event occurring during one prior reporting quarter for which additional event claims have been received. The data files, including reports returned to the facilities [reporting hospitals], allow [allows] the facility [reporting hospital] to provide physicians and other health professionals the opportunity to review, request correction of, and comment on patients for whom an [and] event occurred under the jurisdiction of the facilities [reporting hospitals] and they are indicated as "attending" or "operating or other". DSHS shall determine the format and medium in which the quarterly file will be delivered to facilities [reporting hospitals].

(b) The chief executive officer or chief executive officer's designated agent of each facility [reporting hospital] shall mark the appropriate box on the form provided indicating whether the facility [reporting hospital] is certifying or not certifying the event data and reports in the certification file specified in subsection (a) of this section. The chief executive officer or chief executive officer's designated agent shall sign and return the form to DSHS by fax or mail. A person designated by the chief executive officer and acting as the officer's agent may sign the certification form. Designation of an agent does not relieve the chief executive officer of personal responsibility for the certification. If the chief executive officer or chief executive officer's designated agent does not believe the quarterly file is accurate, the officer shall provide DSHS with detailed comments regarding the errors or submit

a written request (on a form supplied by DSHS) and provide the data, processes and resources necessary to correct any inaccuracy and certify the certification file subject to those corrections being made prior to the deadlines specified in this subsection. Corrections to certification event data shall be submitted on or prior to the following schedule: Quarter 1 - October 15; Quarter 2 - January 15; Quarter 3 - April 15; Quarter 4 - July 15. Chief Executive Officers or designees that elect not to certify shall submit a reasoned justification explaining their decision to not certify their discharge encounter data and attach the justification to the certification form. Election to not certify data does not prevent certification file data from appearing in the public use data file. Data that is not corrected and submitted by the deadline may appear in the public use data file.

(c) The signed certification form shall represent that:

(1) policies and procedures are in place within the facility's [reporting hospital's] processes to validate and assure the accuracy of the event data and any corrections submitted; and

(2) all errors and omissions known to the facility [reporting hospital] have been corrected or the facility [reporting hospital] has submitted comments describing the errors and the reasons why they could not be corrected; and

(3) to the best of their knowledge and belief, the data submitted accurately represents the facility's [reporting hospital's] administrative status of [discharged] patients for which the services covered by the revenue codes identified in §421.67(f) of this title (relating to Event File--Records, Data Fields and Codes) were provided for the reporting quarter; and

(4) the facility [reporting hospital] has provided physicians and other health professionals a reasonable opportunity to review and comment on the event data of patients for which they were reported in one of the available physician number and name fields provided on the acceptable formats specified in §421.67 [§1301.68] of this title [(relating to Event Files—Records, Data Fields and Codes)] (for example, "attending physician" or "operating or other physician" as applicable). The physicians or other health professionals may write comments and have errors brought to the attention of the chief executive officer or the chief executive officer's designated agent who [and] shall address any comments by the physicians or other health professionals; or

(5) if the chief executive officer or the officer's designee elects not to certify the event data file for a specific quarter, a written justification of any unresolved data issues concerning the accuracy and completeness of the data at the time of the certification shall be included on the certification form. Event claim data that has been audited, returned to the facility [reporting hospital] and is not certified, may be released and published in the public use data file and used by DSHS for analysis.

(d) Each facility [reporting hospital] shall submit its certification form for each quarter's data to DSHS by the first day of the ninth month (Quarter 1 - December 1; Quarter 2 - March 1; Quarter 3 - June 1; Quarter 4 - September 1) following the last day of the reporting quarter as specified in §421.63(a)(1) - (4) [§1301.63(a)(1)-(4)] of this title (relating to Schedule for Filing Event Files). DSHS may extend the deadline for any or all facilities [reporting hospitals] when deemed necessary.

(e) Facilities [Reporting hospitals], physicians or other health professionals may submit concise written comments regarding any data submitted by the associated facilities [reporting hospitals] or relating to services[;] they have delivered which may be released as public use data. Comments shall be submitted to DSHS on or before the dates specified in subsection (d) of this section, regarding the submission

of the certification form. Commenters are responsible for assuring that the comments contain no patient or physician identifying information. Comments shall be submitted electronically using the method described in §421.64(a) [~~§1301.64(a)~~] and (b) of this title (relating to Instructions for Filing Event Files).

(f) (No change.)

§421.67. Event Files--Records, Data Fields and Codes.

(a) Facilities [Reporting Hospitals] shall submit event files, electronically in the file format for outpatient [~~hospital~~] bills defined by the American National Standards Institute (ANSI), commonly known as the ANSI ASC X12N form 837 Health Care Claims transaction for institutional claims or ANSI ASC X12N form 837 Health Care Claims transaction for professional claims. ANSI updates these formats [this format] from time to time by issuing new versions and the United States Department of Health and Human Services adopts regulations regarding HIPAA that update the version allowed for claim submissions.

(b) (No change.)

(c) In addition to the data elements contained in the ANSI 837 Institutional Guide and the ANSI 837 Professional Guide, DSHS has specified the location where each of the following data elements in this subsection shall be reported in the ANSI 837 Institutional [~~format~~] Guide format and the ANSI 837 Professional Guide format. Data element content, format and locations may change as state legislative requirements, or federal legislative or regulation requirements change [changes] (i.e., HIPAA).

(1) Patient race - This data element shall be reported at Loop 2010BA or 2010CA in the segment DMG05 as a numeric value. Acceptable codes are 1 = American Indian/Eskimo/ Aleut, 2 = Asian or, Pacific Islander, 3 = Black, 4 = White and 5 = Other Race. In order to obtain this data, the facility [hospital] staff retrieves the patient's response from a written form or asks the patient, or the person speaking for the patient to classify the patient. If the patient, or person speaking for the patient, declines to answer, the facility [hospital] staff is to use its best judgment to make the correct classification based on available data.

(2) Patient ethnicity - This data element shall be reported at Loop 2300 in the segment NTE02 as a numeric value. Acceptable codes are 1 = Hispanic or Latino Origin and 2 = Not of Hispanic or Latino Origin. In order to obtain this data, the facility [hospital] staff retrieves the patient's response from a written form or asks the patient, or the person speaking for the patient to classify the patient. If the patient, or person speaking for the patient, declines to answer, the facility [hospital] staff is to use its best judgment to make the correct classification based on available data.

(3) Other E-codes - These additional E-codes (maximum of 9 other E-codes, a total of 10 E-codes may be submitted) shall be reported (if applicable) in the following ANSI [~~X12N Form~~] 837 Institutional Guide locations: Loop 2300, segments, HI05-2, HI06-2, HI07-2, HI08-2, HI09-2, HI10-2, HI11-2 and HI12-2. (The first E-code is generally reported in Loop 2300 segment HI04-2). E-codes may be submitted in the ANSI 837 Professional Guide in the following locations Loop 2300, data fields: HI02-2, HI03-2, HI04-2, HI05-2, HI06-2, HI07-2 or HI08-2 if applicable preceded by "BN" qualifying code in the respective data field HI02-1, HI03-1, HI04-1, HI05-1, HI06-1, HI07-1 or HI08-1.

(4) THCIC Identification Number - This data element shall be submitted in data segment REF02 (Secondary Identification Number) of one of the following [~~following~~] Loops where the patient received the event services:

(A) - (B) (No change.)

(C) Loop 2310E (ANSI 837 Institutional Guide) or Loop 2310D (ANSI 837 Professional Guide) associated with the "Service Facility Provider".

(d) Facilities [Reporting hospitals] shall submit the required minimum data set in the following modified ANSI 837 Institutional Guide format for all patients that are uninsured or considered self-pay or covered by third party payers in which the payer requires the claim be submitted in an ANSI 837 Institutional Guide format or CMS-1450 format for which an event claim is required by this subchapter. The required minimum data set for the modified (as specified in subsection (c) of this section) ANSI 837 Institutional Guide format includes the following data elements as listed in this subsection:

(1) - (12) (No change.)

(13) Type of Bill (Facility Type Code plus Claim Frequency Code);

(14) (No change.)

~~{(15) Start of Care;}~~

~~{(A) Start of Care Date; and}~~

~~{(B) Start of Care Hour;}~~

~~{(16) Patient (Discharge) Status;}~~

~~{(17) Patient Discharge Hour;}~~

(15) ~~{(18)}~~ Principal Diagnosis;

(16) ~~{(19)}~~ Patient's Reason for Visit;

(17) ~~{(20)}~~ External Cause of Injury (E-Code) up to 10 occurrences (if applicable);

(18) ~~{(21)}~~ Other Diagnosis Codes - up to 24 occurrences (all applicable);

(19) ~~{(22)}~~ Principal Procedure Code (if applicable);

(20) ~~{(23)}~~ Principal Procedure Date (if applicable);

(21) ~~{(24)}~~ Other Procedure Codes - up to 24 occurrences (if applicable);

(22) ~~{(25)}~~ Other Procedure Dates - up to 24 occurrences (if applicable);

(23) ~~{(26)}~~ Occurrence Code - up to 24 occurrences (if applicable);

(24) ~~{(27)}~~ Occurrence Code Associated Date - up to 24 occurrences (if applicable);

(25) ~~{(28)}~~ Value Code - up to 24 occurrences (if applicable);

(26) ~~{(29)}~~ Value Code Associated Amount - up to 24 occurrences (if applicable);

(27) ~~{(30)}~~ Condition Code - up to 24 occurrences (if applicable);

(28) Related Cause Code - up to 3 occurrences (if applicable);

(29) ~~{(31)}~~ Other Provider [~~Attending Physician~~] or Other Health Professional [~~Attending Practitioner~~] Name:

(A) Other Provider or Other Health Professional [~~Attending Practitioner~~] Last Name;

(B) Other Provider or Other Health Professional [~~Attending Practitioner~~] First Name; and

(C) Other Provider or Other Health Professional [Attending Practitioner] Middle Initial.

(30) [(32)] Other Provider or Other Health Professional [Attending Practitioner] Primary Identifier (National Provider Identifier [; when HIPAA rule is implemented]);

(31) [(33)] Other Provider or Other Health Professional [Attending Practitioner] Secondary Identifier (Texas state license number [or UPIN]);

(32) [(34)] Operating Physician or Other Health Professional [Practitioner] Name (if applicable);

(A) Operating Physician or Other Health Professional [Practitioner] Last Name;

(B) Operating Physician or Other Health Professional [Practitioner] First Name; and

(C) Operating Physician or Other Health Professional [Practitioner] Middle Initial.

(33) [(35)] Operating Physician or Other Health Professional [Practitioner] Primary Identifier (National Provider Identifier[; when HIPAA rule is implemented]);

(34) [(36)] Operating Physician or Other Health Professional [Practitioner] Secondary Identifier (Texas state license number [or UPIN]);

(35) [(37)] Total Claim Charges;

(36) [(38)] Revenue Service Line Details (up to 999 service lines) (all applicable);

(A) Revenue Code;

(B) Procedure Code;

(C) HCPCS [HCPCS/HIPPS] Procedure Modifier 1;

(D) HCPCS [HCPCS/HIPPS] Procedure Modifier 2;

(E) HCPCS [HCPCS/HIPPS] Procedure Modifier 3;

(F) HCPCS [HCPCS/HIPPS] Procedure Modifier 4;

(G) Charge Amount;

(H) Unit Code;

(I) Unit Quantity;

(J) Unit Rate; and

(K) Non-covered Charge Amount.

(37) [(39)] Service Provider Name;

(38) [(40)] Service Provider Primary Identifier - Provider Federal Tax ID (EIN) or National Provider Identifier [(when HIPAA rule is implemented)];

(39) [(41)] Service Provider Address:

(A) Service Provider Address Line 1;

(B) Service Provider Address Line 2 (if applicable);

(C) Service Provider City;

(D) Service Provider State; and

(E) Service Provider ZIP; and

(40) [(42)] Service Provider Secondary Identifier - THCIC 6-digit facility [Hospital] ID assigned to each facility;[;]

(41) Referring Provider or Referring Other Health Professional Name (if applicable) (Up to 2 Occurrences);

(A) Referring Provider or Referring Other Health Professional Last Name;

(B) Referring Provider or Referring Other Health Professional First Name;

(C) Referring Provider or Referring Other Health Professional Middle Initial;

(42) Referring Provider or Referring Other Health Professional Primary Identifier (National Provider Identifier) (if applicable) (Up to 2 Occurrences); and

(43) Referring Provider or Referring Other Health Professional Secondary Identifier (Texas state license number) (if primary identifier not available) (if applicable) (Up to 2 Occurrences).

(e) Facilities shall submit the following required minimum data set in the following modified ANSI 837 Professional Guide format for all patients for which an event claim is required by a third party payer to be in the ANSI 837 Professional Guide format or CMS-1500 format and required to be submitted under this subchapter. At a facility's option, a facility may choose to submit the required data set listed in subsection (d) of this section. The required minimum data set for the modified (as specified in subsection (c) of this section) ANSI 837 Professional Guide format includes the following data elements as listed in this subsection.

(1) Patient Name.

(A) Patient Last Name;

(B) Patient First Name; and

(C) Patient Middle Initial;

(2) Patient Address.

(A) Patient Address Line 1;

(B) Patient Address Line 2 (if applicable);

(C) Patient City;

(D) Patient State;

(E) Patient ZIP; and

(F) Patient Country (if address is not in United States of America or one of its territories);

(3) Patient Birth Date;

(4) Patient Sex;

(5) Patient Race;

(6) Patient Ethnicity;

(7) Patient Social Security Number;

(8) Patient Account Number;

(9) Patient Medical Record Number (if applicable);

(10) Claim Filing Indicator Code (Payer Source - primary and secondary (if applicable for secondary payer source);

(11) Payer Name - Primary and secondary (if applicable, for both);

(12) National Plan Identifier - for primary and secondary (if applicable) payers (National Health Plan Identification number, if applicable and when assigned by the federal government);

(13) Type of Bill (Facility Type Code plus Claim Frequency Code);

(14) Service Date;

(15) Principal Diagnosis;

(16) Other Diagnosis Codes - up to 7 occurrences (all applicable);

(17) Related Cause Code - up to 3 occurrences (if applicable);

(18) Principal Procedure Code (if applicable);

(19) Principal Procedure Date (if applicable);

(20) Procedure Codes - up to 50 occurrences (all applicable);

(A) HCPCS Procedure Modifier 1;

(B) HCPCS Procedure Modifier 2;

(C) HCPCS Procedure Modifier 3;

(D) HCPCS Procedure Modifier 4;

(E) Charge Amount;

(F) Unit Code; and

(G) Unit Quantity;

(21) Referring Provider or Referring Other Health Professional Name (if applicable) (Up to 2 occurrences):

(A) Referring Provider or Referring Other Health Professional Last Name;

(B) Referring Provider or Referring Other Health Professional First Name; and

(C) Referring Provider or Referring Other Health Professional Middle Initial;

(22) Referring Provider or Referring Other Health Professional Primary Identifier (National Provider Identifier) (if applicable) (Up to 2 occurrences);

(23) Referring Provider or Referring Other Health Professional Secondary Identifier (Texas state license number) (if primary identifier not available) (if applicable) (Up to 2 occurrences);

(24) Rendering Provider or Rendering Other Health Professional Name (Up to 2 occurrences):

(A) Rendering Provider or Rendering Other Health Professional Last Name;

(B) Rendering Provider or Rendering Other Health Professional First Name; and

(C) Rendering Provider or Rendering Other Health Professional Middle Initial;

(25) Rendering Provider or Rendering Other Health Professional Primary Identifier (National Provider Identifier) (Up to 2 occurrences);

(26) Rendering Provider or Rendering Other Health Professional Secondary Identifier (Texas state license number) (if primary identifier not available) (Up to 2 occurrences);

(27) Total Claim Charges;

(28) Service Provider Name;

(29) Service Provider Primary Identifier--Provider Federal Tax ID (EIN) or National Provider Identifier;

(30) Service Provider Address:

(A) Service Provider Address Line 1;

(B) Service Provider Address Line 2 (if applicable);

(C) Service Provider City;

(D) Service Provider State; and

(E) Service Provider ZIP;

(31) Service Provider Secondary Identifier--THCIC 6-digit Hospital ID assigned to each facility.

(f) Facilities shall submit the required minimum data set to DSHS for each patient who has one or more of the following revenue codes for services rendered to the patient in the facility.

(1) 0321 Radiology--Diagnostic Angiocardiology;

(2) 0322 Radiology--Diagnostic Arthrography;

(3) 0323 Radiology--Diagnostic Arteriography;

(4) 0329 Radiology--Diagnostic Other Radiology - Diagnostic;

(5) 0330 Radiology--Therapeutic General Classification;

(6) 0333 Radiology--Therapeutic Radiation Therapy;

(7) 0339 Radiology--Therapeutic Other Radiology - Therapeutic;

(8) 0340 Nuclear Medicine General Classification;

(9) 0341 Nuclear Medicine Diagnostic;

(10) 0342 Nuclear Medicine Therapeutic;

(11) 0343 Nuclear Medicine Diagnostic Pharmaceuticals;

(12) 0344 Nuclear Medicine Therapeutic Pharmaceuticals;

(13) 0349 Nuclear Medicine Other Nuclear Medicine;

(14) 0350 Computed Tomography (CT) Scan General Classification;

(15) 0351 Computed Tomography (CT)--Head Scan;

(16) 0352 Computed Tomography (CT)--Body Scan;

(17) 0359 Computed Tomography (CT)--Other;

(18) 0360 Operating Room Services General Classification;

(19) 0361 Operating Room Services Minor Surgery;

(20) 0369 Operating Room Services Other Operating Room Services;

(21) 0400 Other Imaging Services General Classification;

(22) 0401 Other Imaging Services Diagnostic Mammography;

(23) 0403 Other Imaging Services Screening Mammography;

(24) 0404 Other Imaging Services Positron Emission Tomography (PET);

(25) 0409 Other Imaging Services Other Imaging Services;

(26) 0481 Cardiology Cardiac Catheterization Lab;

- (27) 0483 Cardiology Echocardiology;
- (28) 0489 Cardiology Other Cardiology Services;
- (29) 0490 Ambulatory Surgical Care General Classification;
- (30) 0499 Ambulatory Surgical Care Other Ambulatory Surgical;
- (31) 0500 Outpatient Services General Classification;
- (32) 0509 Outpatient Services Other Outpatient;
- (33) 0610 Magnetic Resonance Technology General Classification;
- (34) 0611 Magnetic Resonance Technology Magnetic Resonance Imaging (MRI)--Brain/Brainstem;
- (35) 0612 Magnetic Resonance Technology Magnetic Resonance Imaging (MRI)--Spinal Cord/Spine;
- (36) 0614 Magnetic Resonance Technology Magnetic Resonance Imaging (MRI)--Other;
- (37) 0615 Magnetic Resonance Technology Magnetic Resonance Angiography (MRA)--Head and Neck;
- (38) 0616 Magnetic Resonance Technology Magnetic Resonance Angiography (MRA)--Lower Extremities;
- (39) 0618 Magnetic Resonance Technology Magnetic Resonance Angiography (MRA)--Other;
- (40) 0619 Magnetic Resonance Technology Other Magnetic Resonance Technology;
- (41) 0760 Specialty Room--Treatment/Observation Room General Classification;
- (42) 0761 Specialty Room--Treatment Room;
- (43) 0762 Specialty Room--Observation Room; and
- (44) 0769 Specialty Room--Other Specialty Room.

§421.68. Event Data Release.

(a) DSHS records are public records under Government Code, Chapter 552, except as specifically exempted by Health and Safety Code, §§108.010, 108.011 and 108.013 or other state or federal law. Copies of such records may be obtained upon request and upon payment of user fees established by DSHS. The public use data file shall be available for public inspection during normal business hours. Event claims in the original format as submitted to DSHS are not available to the public, are not stored at DSHS and are exempt from disclosure pursuant to Health and Safety Code, §§108.010, 108.011 and 108.013, and shall not be released. Likewise, patient and physician identifying data collected by the DSHS through editing of facility data shall not be released.

(b) Creation of codes and identifiers. DSHS shall develop the following codes and identifiers, as listed in paragraphs (1) - (2) of this subsection, required for creation of the public use data file and for other purposes.

(1) DSHS shall create a process for assigning uniform patient identifiers, uniform physician identifiers and uniform other health professional identifiers using data elements collected. This process is confidential and not subject to public disclosure. Any documents or records produced describing the process or disclosing the person associated with an identifier are confidential and not subject to public disclosure.

(2) DSHS shall create a process for assigning geographic identifiers to each event record.

(c) Requests for outpatient event data files including data on one or more providers are matters of public record and copies of all requests shall be maintained by DSHS in accordance with DSHS records retention schedule.

(d) All users including Texas state agencies that request outpatient event data shall abide by the data use agreement.

(e) DSHS shall establish procedures for screening all requests to assure that filling the request will not violate the confidentiality provisions of Health and Safety Code, Chapter 108.

(f) The data elements specified for outpatient event reports in this section do not constitute "Provider Quality Data" as discussed in Health and Safety Code, §108.010.

(g) Creation of public use data file. DSHS will create a public use data file by creating a single record for each reportable outpatient event and adding, modifying or deleting data elements in the following manner as listed in this subsection:

(1) delete patient and insured name, Social Security number, address and certificate data elements, any patient identifying information, and patient control and medical record numbers;

(2) convert patient birth date to age;

(3) convert procedure dates to a code for the day of the week;

(4) convert occurrence dates to day values;

(5) delete physician and other health professional names and numbers and assign a alphanumeric uniform physician identifier for the physicians and other health professionals who were reported as "referring," "rendering," "operating or other" or "other provider" on patients;

(6) assign codes indicating the primary and secondary sources of payment;

(7) the minimum cell size required by Health and Safety Code, §108.011(i)(2), shall be five, unless DSHS determines that a higher cell size is required to protect the confidentiality of an individual patient or physician;

(8) convert all procedure codes to HCPCS codes (in the version that is current for the date the data was due to be submitted or the version in effect at the date of service);

(9) add nationally accepted risk and severity adjustment scores utilizing an algorithm approved by DSHS, when available and applicable;

(10) data elements to be included in the public use data file:

(A) Event Year and Quarter;

(B) Provider Name (Facility Name);

(C) THCIC Identification Number;

(D) Facility Type Indicators;

(E) Patient Sex/Gender;

(F) Patient ZIP Code;

(G) County Code;

(H) Health Service Region Code;

(I) Patient State;

(J) Patient Race;

(K) Patient Ethnicity;

(L) Claim Type Indicator;

(M) Type of Bill;

(N) Principal Diagnosis Code (Current version of ICD codes at the time data is submitted);

(O) Other Diagnosis Codes (Up to 24 diagnosis codes can be submitted and reported. Current version of ICD codes at the time data is submitted);

(P) Principal Procedure code (if applicable) (Current version of HCPCS codes at the time data is submitted);

(Q) Other Procedure codes (Up to 24 procedure codes can be submitted and reported. Current version of HCPCS codes at the time data is submitted);

(R) Reason For Visit (Current version of ICD or HCPCS codes at the time data is submitted);

(S) External Cause of Injury (E-codes), (if applicable) (Current version of ICD codes at the time data is submitted. Up to nine (9) E-codes can be submitted and reported);

(T) Related Cause Code, (if applicable) (Up to three (3) codes can be submitted and reported);

(U) Day of Week Patient is provided services code (Sunday = 1, Monday = 2, Tuesday = 3, Wednesday = 4, Thursday = 5, Friday = 6, Saturday = 7);

(V) Age group of patient;

(W) CRG Code (and associated codes if applicable);

(X) APG Code (Obtained from 3M APG Grouper) if applicable (Up to 10);

(Y) APG Category Code (Obtained from 3M APG Grouper) if applicable (Up to 10);

(Z) APG Type Code (Obtained from 3M APG Grouper) if applicable (Up to 10);

(AA) Final APG Assignment Code (Obtained from 3M APG Grouper) if applicable (Up to 10);

(BB) Final APG Category Code (Obtained from 3M APG Grouper) if applicable (Up to 10);

(CC) APC Procedure Code (if applicable) (Up to 10);

(DD) APC Procedure Status Indicator Code (if applicable) (Up to 10);

(EE) APC Diagnosis Edits (if applicable) (Up to 10);

(FF) APC Procedure Code Edits (if applicable) (Up to 10);

(GG) APC Weight (if applicable) (Up to 10);

(HH) APC Base Procedure (if applicable) (Up to 10);

(II) Clinical Classification Software Category Codes and associated codes, if applicable;

(JJ) Uniform Physician Identifier assigned to Rendering Physician or Rendering Other Health Professional;

(KK) Uniform Physician Identifier assigned to Operating Physician or Other Physician or Other Health Professional;

(LL) Uniform Physician Identifier assigned to Other Provider or Other Health Professional;

(MM) Uniform Physician Identifier assigned to Referring Provider or Referring Other Health Professional;

(NN) Ancillary Service--Other Charges;

(OO) Ancillary Service--Pharmacy Charges;

(PP) Ancillary Service--Medical/Surgical Supply Charges;

(QQ) Ancillary Service--Durable Medical Equipment Charges;

(RR) Ancillary Service--Used Durable Medical Equipment Charges;

(SS) Ancillary Service--Physical Therapy Charges;

(TT) Ancillary Service--Occupational Therapy Charges;

(UU) Ancillary Service--Speech Pathology Charges;

(VV) Ancillary Service--Inhalation Therapy Charges;

(WW) Ancillary Service--Blood Charges;

(XX) Ancillary Service--Blood Administration Charges;

(YY) Ancillary Service--Operating Room Charges;

(ZZ) Ancillary Service--Lithotripsy Charges;

(AAA) Ancillary Service--Cardiology Charges;

(BBB) Ancillary Service--Anesthesia Charges;

(CCC) Ancillary Service--Laboratory Charges;

(DDD) Ancillary Service--Radiology Charges;

(EEE) Ancillary Service--MRI Charges;

(FFF) Ancillary Service--Outpatient Services Charges;

(GGG) Ancillary Service--Emergency Service Charges;

(HHH) Ancillary Service--Ambulance Charges;

(III) Ancillary Service--Professional Fees Charges;

(JJJ) Ancillary Service--Organ Acquisition Charges;

(KKK) Ancillary Service--ESRD Revenue Setting Charges;

(LLL) Ancillary Service--Clinic Visit Charges;

(MMM) Total Charges--Ancillary;

(NNN) Total Non-Covered Ancillary Charges;

(OOO) Total Charges;

(PPP) Total Non-Covered Charges;

(QQQ) Encounter Identifier--a unique number for each encounter for the quarter;

(RRR) Service Line Revenue Code;

(SSS) Service Line Procedure Code;

(TTT) HCPCS/HIPPS Procedure Code;

(UUU) HCPCS/HIPPS Procedure Modifiers (Up to 4 may be submitted and reported);

(VVV) Service Line Charge Amount;

(WWW) Service Line Unit Code;

(XXX) Service Line Unit Count;

(YYY) Service Line Non-Covered Charge Amount;

and

(ZZZ) Patient Country (when the address is not in United States of America and confidentiality can be maintained).

(h) Release of public use data files. DSHS shall release in an aggregate form, without uniform patient, physician or other health professional identifiers, public use data relating to facilities described by the Health and Safety Code, §108.0025(1), that are not rural providers because they do not meet the requirements of Health and Safety Code, §108.0025(2).

(1) DSHS will make available a public use data file on electronic, magnetic or optical media for each quarter.

(2) DSHS shall release public use data from facilities that have certified the data as required by §421.66 of this title (relating to Certification of Compiled Event Data). A facility's failure to execute the certification form by the dates specified in §421.66(d) of this title, or election to not certify the discharge encounter data shall not prevent the DSHS from releasing the facility's data if DSHS believes the data submitted is reasonably accurate and complete. DSHS may suppress for any quarter's data one or more data elements if deemed necessary to comply with provisions of the statute.

(3) If additional event claims (not previously submitted as specified in §421.65(b)(4) of this title (Acceptance of Event Files and Correction of Data Content Errors), excluding replacement, adjustments and void/cancel claims become available after the initial release of the public use data file for any quarter, DSHS will add the discharge claims, that are received on or prior to the dates specified in §421.63(a)(1) - (4) of this title (relating to Schedule for Filing Event Files) of the following quarter, to the public use data file and make the additional records available to the public.

(4) A public use data file which is disseminated to a requestor shall not be considered a report issued by DSHS as referenced in Health and Safety Code, §108.011(f), and requires no additional opportunity for the facility to review or comment on the data.

(5) With any public use data file prepared by the DSHS, DSHS shall attach all comments submitted by providers, which relate to any data included in the file. DSHS shall also make these comments available at DSHS offices and on the DSHS Internet site.

(i) A outpatient event research data file may be released provided the following criteria are met:

(1) the DSHS Outpatient Data Research Data File Request Form is completed and submitted to DSHS;

(2) the requestor has made payment according to DSHS' fee schedule;

(3) the Institutional Review Board reviews the research request and has determined the proposed research outcome can be achieved with the requested data;

(4) the Institutional Review Board grants authorization to the request or restricts access to specified data elements determined to be inappropriate for the research proposal in accordance with §421.10 of this title (relating to Institutional Review Board);

(5) the requestor agrees to dispose of the research data using authorized methods by the established end date stated on the written data use agreement; and

(6) the requestor has signed a written data use agreement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 2, 2008.

TRD-200802829

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: July 13, 2008

For further information, please call: (512) 458-7111 x6972



TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

SUBCHAPTER E. HEALTH FACILITY FEES

28 TAC §134.402

The Texas Department of Insurance, Division of Workers' Compensation (Division) proposes amendments to 28 TAC §134.402 concerning Ambulatory Surgical Center Fee Guideline. These amendments are necessary to comply with the requirements of Labor Code §413.011 and §413.012. The current rule was originally adopted in 2004 to comply with statutory mandates enacted in 2001 by House Bill (HB) 2600, 77th Legislature, Regular Session. HB 2600 amended §413.011 to add new requirements for workers' compensation reimbursement policies and guidelines. Prior to adoption of the 2004 fee guideline, the Texas workers' compensation system did not have a fee schedule for health care provided in ambulatory surgical centers (ASCs). Therefore, those services were reimbursed on a case-by-case basis determination of what was fair and reasonable under what was then 28 TAC §134.1 of this title (relating to Use of the Fee Guidelines, repealed effective May 2, 2006).

Section 134.402 was amended in 2005 to address certain impacts of the new rule on participants in the Texas workers' compensation system. In 2007 the Centers for Medicare and Medicaid Services (CMS) significantly revised the Medicare ASC reimbursement methodology. The Division amended 28 TAC §134.402 in December 2007 to maintain the stability of the ASC reimbursement process while researching and preparing to implement the new Medicare ASC reimbursement methodology. The December 2007 amendments continued the use of reimbursement structures and amounts of the Medicare ASC 2007 rates for ASC facility services provided on January 1, 2008 through August 31, 2008. This continuation has afforded additional time for the Commissioner of Workers' Compensation (Commissioner) to determine and establish the appropriate

ASC reimbursement methodology. The amendments to the rule are needed to align with revised Medicare reimbursement methodologies, develop the most suitable reimbursement structure, and utilize appropriate conversion factors or other payment adjustment factors geared to the Texas workers' compensation system.

Labor Code §413.011 establishes the requirements for Division fee guidelines for medical services. The statute requires the Commissioner to adopt health care reimbursement policies and guidelines that reflect reimbursement structures found in other health care delivery systems with minimal modifications as necessary to meet occupational injury requirements. In addition, §413.011(a) requires the Commissioner to adopt the most current reimbursement methodologies, models, and values or weights used by the CMS to achieve standardization, including applicable payment policies relating to coding, billing, and reporting, and may modify documentation requirements as necessary to meet the requirements of Labor Code §413.053 (relating to Standards of Reporting and Billing).

Under Labor Code §413.011(b), the Commissioner is required to develop conversion factors or other payment adjustment factors in determining appropriate fees when developing these guidelines, taking into account economic indicators in health care by not adopting conversion factors or other payment adjustment factors based solely on those factors as developed by the CMS. The subsection further states that it does not directly itself adopt the Medicare fee schedule into Texas law.

Labor Code §413.011(d) requires that guidelines for medical services be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual or an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. Notwithstanding §413.016 or any other provision of title 5 of the Labor Code, §413.011(d-1) provides that an insurance carrier may pay fees to a health care provider that are inconsistent with the fee guidelines adopted by the Division if the insurance carrier or a network under Chapter 1305, Insurance Code, arranging for out-of-network services under Insurance Code §1305.006: (1) has a contract with the health care provider, that includes a specific fee schedule; and (2) complies with the notice requirements established under §413.011(d-2).

Additionally, Labor Code §413.012 requires the Commissioner to review and revise the medical policies and fee guidelines every two years to reflect fair and reasonable fees. Labor Code §413.0511(b)(1) also requires consultation with the Medical Advisor in developing, reviewing, and maintaining guidelines. Section 413.041 of the Labor Code requires health care practitioners and health care providers to submit to the Division financial disclosure information including ASC ownership interests.

These requirements have been taken into consideration in the development of this proposal. This proposed section does not apply to political subdivisions with contractual relationships under Labor Code §504.053(b)(2).

As part of the development of this proposed amended section, the Division posted an informal working draft of the proposed amended section on its website in January 2008 and also held a stakeholder meeting on February 15, 2008.

MEDICARE

CMS regulates the Medicare and Medicaid programs. CMS has established a Medicare prospective payment system (PPS) for hospital/facility-based services, which include inpatient and outpatient hospital care, ambulatory surgical services, and other facility-based services such as, but not limited to, rehabilitation, psychiatric, and long term care units. Medicare requires a deductible and co-pay from the patient until the patient reaches a certain level of expenditures. When setting reimbursement amounts, Medicare considers and includes this deductible and co-pay for facility services. CMS has directed extensive research in determining facility reimbursements in the Medicare system. Reimbursements are based on a facility's expected cost to provide a service rather than charged amounts, thus reimbursements differ by facility type. CMS establishes a predetermined amount of reimbursement which bundles or packages services. CMS updates reimbursements periodically based on a variety of factors, including weights (e.g., intensity), clinical issues, costs, inflation, and federal budget constraints. Reimbursement is based on national average costs with adjustments for geographic and facility specific factors. In addition, billed claims are subject to clinical coding edits Medicare has developed.

In setting the payment rates in the Outpatient Payment Prospective System (OPPS), CMS covers hospitals' operating and capital costs for services they furnish. Ambulatory Payment Classifications (APCs) were adopted by CMS in August 2000. There are more than 800 APCs based on clinically similar items and services requiring similar amounts of resources. An outpatient visit may include multiple APCs, each APC having a predetermined rate. CMS determines the payment rate for each service by multiplying the APC relative weight for the service by a conversion factor. The relative weight for an APC measures the resource requirements of the service and is based on the median cost of the services in that APC. There are numerous other factors that comprise a reimbursement for a hospital outpatient setting.

On August 2, 2007, CMS published a final rule establishing a revised Medicare payment system for ASCs that applies to services provided on or after January 1, 2008 and expanded access to procedures in the ASC setting by allowing ASC payment to approximately 790 additional procedures in calendar year (CY) 2008. This compares to the nine specific reimbursement categories or ASC groups that were the previous Medicare ASC reimbursement system and are the current Texas workers' compensation ASC reimbursement groups. Also, on November 27, 2007, CMS published a final rule containing CY 2008 payment rates for ASCs based in part on the rates Medicare pays hospital outpatient departments (HOPDs). CMS changed the ASC payment system beginning January 1, 2008 because the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 also called Medicare Modernization Act (MMA) (Pub. L. 108-173, 117 Stat. 2066) required CMS to revise the ASC payment system no later than January 1, 2008.

THE GOVERNMENT ACCOUNTABILITY OFFICE REPORT

CMS based the revised ASC payment system on the OPPS after the Government Accountability Office (GAO) studied ASC costs and found that the relativity of costs among ASC procedures was comparable to their relativity of costs in HOPDs. According to the statutorily mandated GAO report entitled, "Medicare: Payment for Ambulatory Surgical Centers Should Be Based on the Hospital Outpatient Payment System" (GAO-07-86) released in November 2006, ASCs experience greater efficiencies in providing surgical services than HOPDs, resulting in surgical pro-

cedures being less costly when performed in an ASC facility setting. The GAO determined that the APC groups in the OPPIs accurately reflect the relative costs of the procedures performed in ASCs. The GAO's analysis of the cost ratios showed that the ASC-to-APC cost ratios were more tightly distributed around their median cost ratio than were the OPPIs-to-APC ratios. The report's analysis demonstrated that the APC groups reflect the relative costs of procedures performed by ASCs as they do for procedures performed in HOPDs and, therefore, that the APC groups could be used as the basis for an ASC payment. The GAO report concluded that, as a group, the costs of procedures performed in ASCs have a relatively consistent relationship with the costs of the APC groups to which they are assigned under the OPPIs. The GAO's analysis also found that the procedures in the ASC setting have lower costs than those same procedures in HOPDs. The GAO reported that the median cost ratio among all ASC procedures was 0.39, whereas the median cost ratio among all OPPIs procedures was 1.04. When the ASC median cost ratio is weighted according to Medicare ASC utilization, the ASC median cost increases to 0.84. This weighted ratio may be more indicative of the relationship between ASC and HOPD costs than a direct one-to-one comparison of APCs.

Based on its findings from the study, the GAO recommended that CMS implement a payment system for procedures performed in ASCs based on the OPPIs, taking into account the lower relative costs of procedures performed in ASCs compared to HOPDs in determining ASC payment rates. CMS followed the GAO's recommendations.

CMS CY 2008 REVISED ASC PAYMENT SYSTEM

Under the OPPIs-based revised ASC payment system, CMS pays for hospital outpatient services on a rate-per-service basis that varies according to APC group to which the service is assigned. CMS uses the Healthcare Common Procedure Coding System (HCPCS) Level I and Level II codes and descriptors to identify and group the services within each APC group. The OPPIs includes payment for most hospital outpatient services except those identified in the CMS CY 2008 OPPIs/ASC final rule published on November 27, 2007 that updated the OPPIs for CY 2008 and provided the CY 2008 ASC conversion factor and payment rates. Medicare now uses the same APCs for ASCs as are used for HOPDs. Because ASCs provide only surgical services and hospitals provide many other types of outpatient procedures, such as emergency room services, HOPDs will utilize more APCs than ASCs.

In accordance with the MMA, the revised Medicare ASC payment system must be "budget neutral" which means that in CY 2008 Medicare expenditures under the revised Medicare ASC payment system must approximate the expenditures that would have occurred in the absence of the revised Medicare ASC payment system. In the CY 2008 OPPIs/ASC final rule, CMS estimates that ASCs should be paid about 65 percent of the OPPIs payment rates for the same surgical procedures in a HOPD.

The standard Medicare ASC payment for most ASC covered surgical procedures is calculated by multiplying the ASC conversion factor (\$41.401 for CY 2008) by the ASC relative payment weight set (based on the OPPIs relative payment weight) for each separately payable procedure.

The complete lists of ASC covered surgical procedures and ASC covered ancillary services, the applicable payment indicators, payment rates for each covered surgical procedure and ancillary service before adjustment for regional wage variations, the wage

adjusted payment rates, and wage indices are available on the CMS web site at <http://www.cms.hhs.gov/ascpayment/>.

CMS is providing a four-year transition to the fully implemented revised ASC rates. Payments during the four-year transition to the fully implemented revised ASC payment rates will be based on a blend of the CY 2007 ASC payment rates and the revised ASC payment rates at 75/25 in CY 2008, 50/50 in CY 2009, and 25/75 in CY 2010 with payment at 100 percent of the revised ASC payment rates in 2011. Payment for covered surgical procedures added for ASC payment in CY 2008 or later and payment for covered ancillary services that are not paid separately under the existing ASC payment system will not be subject to a transition. For additional explanation, see <http://www.cms.hhs.gov/ascpayment/>.

IMPLANTABLE DEVICES

Prior to implementation of the revised Medicare ASC payment system, ASCs received separate payment for implantable devices. Under the revised system, CMS uses a modified payment methodology to establish the ASC payment rates for procedures that are designated as "device intensive." Device intensive procedures are specified ASC covered surgical procedures that, under the OPPIs, are assigned to certain device dependent APCs. Device dependent APCs are groups of procedures that require the insertion or implantation of expensive devices. Payment for the high cost devices is packaged into the procedure payments under the OPPIs. For the device dependent APCs, CMS develops estimates of the "device offset percentage," the proportion of the procedures' costs that are attributable to the cost of the device. Under the revised ASC payment system, CMS identifies the covered surgical procedures for which the device offset percentage of the APC to which they are assigned under the OPPIs is greater than 50 percent of the APCs median cost and designates those surgical procedures as device intensive. CMS pays the same amount for the device-related portion of the procedure under the revised ASC payment system as under the OPPIs for HOPDs. However, in the Medicare system payment for the service portion of the ASC rate will be adjusted by the ASC conversion factor.

For example: If the OPPIs payment for a device intensive procedure is \$7,000 and the device offset percentage is 75 percent, the device portion is \$5,250 ($\$7,000 \times 0.75 = \$5,250$). The remaining \$1,750 ($\$7,000 - \$5,250 = \$1,750$) is the service portion of the procedure, the non-device cost that the facility incurs when the device is implanted. Under the revised ASC payment system, CMS will pay the same amount for the device portion of the procedure (\$5,250) as under the OPPIs, but will adjust the service portion to approximately 65 percent of \$1,750, or \$1,137 ($\$1,750 \times 0.65 = \$1,137$). This is consistent with other OPPIs surgical procedures when ASCs are reimbursed for performance of these procedures. Thus, the Medicare ASC rate will be calculated by adjusting the OPPIs service portion by the Medicare ASC conversion factor and that will be added to the full device portion of the OPPIs rate to establish the full Medicare ASC payment rate for the procedure. Using the example, the resulting ASC reimbursement would be \$6,387 ($\$5,250 + \$1,137 = \$6,387$).

Because payment for procedures is based on the OPPIs, which packages payment for implantable devices in the payment for the surgical procedures to implant them, in the Medicare system ASCs will no longer bill separately under the Durable Medical Equipment, Prosthetics/Orthotics, and Supplies (DMEPOS) fee schedule for any implantable devices.

Procedure payments, into which payment for devices is packaged, including those for device intensive procedures, are subject to the adjustment for geographic differences in wage. Because the labor-related share is 50 percent under the revised ASC payment system, the local wage index adjustment is applied to 50 percent of the national payment rate for the procedure involving the device. Payment rates for each covered surgical procedure before adjustment for regional wage variations, the wage adjusted payment rates, and wage indices are available on the CMS web site at <http://www.cms.hhs.gov/ascpayment/>.

Pass-through status under the OPPI is granted to new implantable devices that meet explicit OPPI criteria, including demonstrated substantial clinical improvement for patients. Under the OPPI, devices with pass-through status are paid separately for two to three years at hospital charges adjusted to cost. CMS provides separate payment to ASCs at contractor-priced rates for devices that are included in device categories with pass-through status under the OPPI when the devices are an integral part of a covered surgical procedure. Payment for these devices is not subject to the wage adjustment, while payment for procedures used to implant pass-through devices is subject to the wage adjustment.

In the Medicare system, ASCs will bill separately for devices that have pass-through status under the OPPI when provided integral to covered surgical procedures and will be paid separately under the revised ASC payment system. CMS has instructed ASCs in the Medicare system to use the appropriate Level II HCPCS codes to report the devices.

DIVISION DATA

In maintaining a medical billing database, the Division requires insurance carriers to submit billing and reimbursement information to the Division on a regular basis. The Division implemented a new reporting format in late 2006 to facilitate collection of medical billing and reimbursement data from insurance carriers in conjunction with new electronic billing reporting requirements. The new electronic reporting format is the International Association of Industrial Accident Boards and Commission's 837 format. Insurance carriers submitted CY 2005 and 2006 charged and paid data in this new format, and the Division has based the primary components of its analysis on CY 2006 information. In developing an analysis of the data for the amendment of §134.402 of this title, CY 2006 data was determined to be the most complete set of mature claims data available. The Division reviewed the CY 2006 claims data to have an improved understanding of the types of ASC facility services provided to injured employees and to understand the billing and reimbursement calculations associated with those services. The Division was also able to review charge and payment activity for specific types of services.

Although an important component of the Texas workers' compensation system, ASC facility services account for a proportionally smaller portion of the medical benefits paid in the Texas workers' compensation system than hospital or doctor services. For example, based on a Deloitte Consulting, LLP (Deloitte) analysis of division data payments to ASCs for CY 2006 services totaled approximately \$21.4 million. Based on this observation, the Division estimated ASC reimbursement at less than three percent of total medical payments. Data used in the recent adoption of §134.403 (relating to Hospital Facility Fee Guideline--Outpatient) and §134.404 (relating to Hospital Facility Fee Guideline--Inpatient) estimated payments to hospitals for CY 2006 services totaled approximately \$205 million, which represents approximately 21 percent of total medical payments.

These hospital payments were split relatively evenly between inpatient services (\$93 million) and outpatient services (\$111 million). A similar Division review of reimbursement data for CY 2006 doctor services estimated payments at approximately \$625 million, or nearly 65 percent of total medical payments.

In CY 2006, 338 ASCs had approximately 13,700 Texas workers' compensation admissions, whereas 177 ASCs had ten or fewer admissions. Forty-one ASCs had more than 100 admissions each, representing 64 percent of ASC charges and 62 percent of ASC reimbursements. Seventy-six ASCs had almost 80 percent of the admissions. This concentration is also evident in the services provided in the ASC facility setting. Ninety-five percent of all Texas workers' compensation ASC services were grouped to only 40 APCs. Further, the five most utilized APCs accounted for approximately 70 percent of the Texas workers' compensation system ASC encounters.

DELOITTE CONSULTING, LLP

In March 2008, the Division entered into a professional services agreement with Deloitte, a subsidiary of Deloitte Touche Tohmatsu. Deloitte is one of the leading providers of complex consulting services, with a long history of service to most of the state governments across the country. Deloitte provides technology integration services, supporting the implementation of new legislation, designing operations to support refined business processes, and developing tools to support management decisions, and is often an advisor to some of the largest government agencies in the United States. Deloitte is experienced in deploying ASC and APC fee schedule reimbursement methodologies and is experienced in the workers' compensation area. Deloitte has access to industry and national normative databases that allows it to develop comparative analyses and assess differentials with the Division's internal data.

Specifically, the agreement sought Deloitte's expertise to perform actuarial services that indexes the Texas workers' compensation ASC facility reimbursement to Medicare's 2008 ASC facility reimbursement. Additionally, Deloitte was to index other health care systems' ASC reimbursement with Medicare reimbursement for ASC services.

Texas Workers' Compensation ASC Reimbursement Comparison to Medicare

The Division provided Deloitte detailed ASC utilization, charge, and payment data for CY 2005 and 2006 from the Division medical billing data base. The data set included over 29,000 bills attributable to more than 20,000 injured employees. Deloitte found the data set to be credibly populated and appropriate for use in the analysis. Data for the two calendar years were reviewed at a high level and determined to be consistent. The final analysis focused on the services provided during CY 2006.

As a preliminary review, Deloitte grouped and repriced the CY 2006 according to the CY 2006 Medicare and the §134.402 reimbursement methodologies. Analysis indicated that overall claims were paid at a rate of 213.6 percent of the Medicare ASC rate. This figure is consistent with the Division's stated reimbursement rate of 213.3 percent of Medicare and indicated a high level of data confidence for the majority of 2006 claims.

Almost 98 percent of the Texas workers' compensation claims are for ASC services that are not classified by Medicare as device intensive. Deloitte grouped and repriced these claims according to the new Medicare ASC reimbursement methodology. The resulting analysis estimates that CY 2006 ASC services pro-

vided and reimbursed in the Texas workers' compensation system were paid at approximately 189 percent of CY 2008 Medicare ASC reimbursement. This ratio establishes a reference point for the Division in establishing appropriate ASC reimbursement.

The remaining two percent of Texas workers' compensation claims involved services that Medicare identifies as device intensive. Device intensive procedures are identified as procedures including an implantable device where the device costs are on average more than 50 percent of the total Medicare procedure reimbursement. Deloitte estimated that these claims were reimbursed at approximately 112 percent of the CY 2008 Medicare ASC rate. Deloitte noted that the low figure for reimbursement of device intensive procedures may be related to the high proportion of these claims' overall costs associated with the implantable device rather than the procedure. This may be a result of the relative inconsistency in reporting implantables for separate reimbursement in the existing Texas workers' compensation reimbursement methodology.

Comparison of Commercial and Medicare ASC Payment Rates

Deloitte also provided detailed information regarding reimbursement of ASC services by commercial payors outside the Texas workers' compensation system. The source of the commercial data for this analysis was the 2006 Medstat Market Scan Databases (Medstat). Medstat captures person-specific clinical utilization, expenditures and enrollment across patient types from large employers, health plans, government and public organizations, Blue Cross Blue Shield plans, and third party administrators. Medstat links paid claims and encounter data to detailed patient information across sites and types of providers and over time. This data represents a broad spectrum of insured employees and their dependents. Texas Medstat data for CY 2006 includes claim information for over one million members.

Deloitte analyzed the Medstat data in a similar fashion to the Texas workers' compensation data set. ASC services were identified and the data set processed to eliminate non-groupable claims, claims with negative allowed amounts, and claims where the patient age was less than 18. After applying Medicare grouping and pricing methodologies, Deloitte estimated the average commercial reimbursement for ASC services to be approximately 236 percent of Medicare reimbursement. Deloitte estimated the average ASC reimbursement for Preferred Provider Organizations (PPO) to be 265 percent of Medicare reimbursement, and Health Maintenance Organizations (HMO) to be 148 percent of Medicare reimbursement. Various other payor types such as traditional indemnity, high deductible, basic medical and major medical coverage payment rates were estimated at approximately 217 percent of Medicare ASC reimbursement.

SETTING PAYMENT ADJUSTMENT FACTORS

In proposing payment adjustment factors (PAFs) for use in §134.402 of this title, the Division conducted extensive research to understand ASC facility reimbursement in the current Texas workers' compensation system, including: reimbursement rates, the reimbursement rates as compared to Medicare reimbursement, and the reimbursement rates as compared to non-workers' compensation reimbursement for ASC facility services, all of which are requirements of the Labor Code at §413.011.

The Division also considered economic indicators for hospitals that are particularly relevant to the analysis process. Medicare

margins and market basket information reflect the general increasing costs of care over time.

Deloitte reviewed Texas workers' compensation facility utilization and reimbursement. The reports prepared by Deloitte did not recommend a PAF, however, Deloitte did estimate that for CY 2006 ASC facility services were paid in the Texas workers' compensation system on average 189 percent of CY 2008 Medicare ASC facility services. In reviewing this reimbursement rate, the Division must consider the rate and the failure of CMS to adjust its reimbursement method for ASCs for an extended period of time. Although the Division adjusted for this situation when adopting the current rate, neither the existing §134.402 of this title nor the Medicare methodology actively considered medical inflation on an annual basis. CMS will utilize the Consumer Price Index for all Urban Consumers (CPI-U) (U.S. city average) to adjust its ASC reimbursement rates in CY 2010 and going forward. The CPI-U has increased approximately 15 percent since the adoption of the current rule in May of 2004. If the Texas workers' compensation rate of 189 percent of 2008 Medicare reimbursement had been adjusted to reflect the change in the CPI-U since the original adoption of the rule in 2004, the equivalent rate would currently be approximately 217 percent of the 2008 Medicare ASC rate.

The Division, however, must consider additional factors in setting the PAFs. The ratio of Medicare reimbursement to reimbursement made by other payors is an important comparison. Using commercially available data, Deloitte estimated commercial payor reimbursement for ASC services at approximately 236 percent of Medicare. The disparity between Texas workers' compensation system and commercial market is particularly evident in the five most frequently used APCs for musculoskeletal surgeries. These five APCs account for nearly 30 percent of all Texas workers' compensation system ASC encounters. Commercial reimbursement for the same APCs is approximately 290 percent of Medicare, compared to 172 percent of Medicare in the Texas workers' compensation system. Although Texas workers' compensation system payments exceed the Medicare payment, the existing payments have not been competitive with the commercial market. In some instances, this dissonance may direct Texas workers' compensation surgeries to more expensive settings.

In proposing a revised PAF, the Division noted and considered the recommendations made by system participants. Those recommendations range from approximately 110 percent to 262 percent of the Medicare ASC facility services rate.

The Division also recognized the importance of surgically implanted devices to Texas injured employees. In establishing hospital facility reimbursement rates (see §134.403 and §134.404 of this title), the Division established methodologies to allow separate reimbursement of implantables to insulate facilities from potential losses directly related to the high costs of surgically implanted devices. This concept is replicated in the proposed amended ASC reimbursement methodologies to assure that costs of implantable devices are not a barrier to injured employee's access to services in an ASC facility setting.

The Division is proposing to adopt minimal modifications to Medicare's reimbursement methodology to reflect use of separate reimbursement for surgically implanted devices in non-device intensive procedures to ensure injured employees have access to care, including surgery where surgically implanted devices are medically necessary. The modification establishes two PAFs for the proposed amended rule, which are 235 percent and 153 per-

cent of Medicare ASC reimbursement rate. The lower proposed PAF maintains the offset ratio the Division used in establishing the lower PAF adopted in the hospital outpatient facility reimbursement methodology (see §134.403 of this title).

Additionally, the Division is proposing a specific reimbursement methodology for device intensive procedures that utilizes the higher PAF and allows separate reimbursement for the surgically implanted device either at the Medicare estimated cost, or the actual cost of the item plus an administrative fee. These device intensive procedures are specifically identified by Medicare and have device costs that are at least 50 percent of the Medicare APC reimbursement. In certain APCs, the device portion of the APC may be as high as approximately 88 percent of the Medicare APC rate. This methodology impacts a small number of APCs that warrant special consideration due to the disproportionate allocation of the device payment relative to other APCs.

The proposed amendments not only comply with the requirements of Labor Code §413.011, they also provide the Texas workers' compensation system with a rate that:

- * is within the commercial market range;
- * is less than the current preferred provider organization rate, but more than the current health maintenance organization rate;
- * accounts for inflation based on the CPI-U since the initial adoption of §134.402;
- * provides an increase over current reimbursement, improving the availability of ASC services to injured employees; and
- * maintains injured employee access to surgical implanted devices through separate reimbursement when appropriate for those devices.

The proposed amendments additionally comport with the Commissioner's authority under the Labor Code to audit and investigate both health care providers and insurance carriers as might be used in auditing implantable devices. Considering the value of implantable devices in returning the injured employee to work, the Commissioner may pursue audits to monitor, review, and study the utilization, billing, and reimbursement of implantable devices.

Upon consideration of all these factors and statutory requirements, the Division determines that proposed amended rates of 235 and 153 percent of the Medicare ASC reimbursement are the appropriate PAFs to be utilized in the Texas workers' compensation system along with the other identified proposed amendments for reimbursement of ASC facility services.

DESCRIPTION OF THE PROPOSED AMENDMENTS

Proposed amended §134.402(a) describes the applicability of the section. Proposed amended §134.402(a)(1) states that the section applies to facility services provided on or after September 1, 2008 by an ASC, other than professional medical services. Proposed amended §134.402(a)(2) notes that the section does not apply to professional medical services billed by a health care provider not employed by the ASC, except for a surgical implant provider as described in the section; and, that it is not applicable to services provided through a workers' compensation health care network certified pursuant to Insurance Code Chapter 1305, except as provided in Insurance Code Chapter 1305.

Proposed amended §134.402(b) provides definitions for words and terms that are used in the section. Proposed new §134.402(b)(1) defines the term "Ambulatory Surgical Center"

to mean a health care facility appropriately licensed by the Texas Department of State Health Services. Proposed new §134.402(b)(2) defines the term "ASC device portion" to mean the portion of the ASC payment rate that represents the cost of the implantable device, and says that it is calculated by applying the CMS OPPS device offset percentage to the OPPS payment rate. Proposed new §134.402(b)(3) defines the term "ASC service portion" to mean the Medicare ASC payment rate less the device portion. Proposed new §134.402(b)(4) defines the term "Device intensive procedure" to mean an ASC covered surgical procedure that has been designated by CMS as device intensive in TABLE 56-ASC COVERED SURGICAL PROCEDURES DESIGNATED AS DEVICE INTENSIVE FOR CY 2008, as published in the November 27, 2007 publication of the *Federal Register*, or its successor. Proposed amended §134.402(b)(5) defines the term "Implantable" to mean an object or device that is surgically implanted, embedded, inserted, or otherwise applied, and related equipment necessary to operate, program, and recharge the implantable. Proposed new §134.402(b)(6) defines the term "Medicare payment policy" to mean reimbursement methodologies, models, and values or weights including its coding, billing, and reporting payment policies as set forth in the CMS payment policies specific to Medicare. Proposed new §134.402(b)(7) defines the term "Surgical implant provider" to mean a person that arranges for the provision of implantable devices to a health care facility and that seeks reimbursement for the implantable devices provided directly from an insurance carrier.

Proposed amended §134.402(c) clarifies that a surgical implant provider is subject to Chapter 133 and is considered a health care provider for purposes of the section and the sections in Chapter 133 of this title.

Proposed amended §134.402(d) requires that for coding, billing, and reporting of facility services covered in the section, Texas workers' compensation system participants shall apply Medicare payment policies in effect on the date a service is provided with any additions or exceptions specified in this section. Proposed amended §134.402(d)(1) provides for the inclusion of specific provisions contained in the Labor Code or the Texas Department of Insurance, Division of Workers' Compensation (Division) rules, including Chapter 134, as taking precedence over any conflicting provision adopted or utilized by the CMS in administering the Medicare program. Proposed amended §134.402(d)(2) provides for the inclusion of Independent Review Organization decisions regarding medical necessity made in accordance with Labor Code §413.031 and §133.308 of this title (relating to MDR by Independent Review Organizations), which are made on a case-by-case basis, as taking precedence in that case only, over any Division rules and Medicare payment policies. Proposed new §134.402(d)(3) provides for the stated inclusion that whenever a component of the Medicare program is revised and effective, use of the revised component shall be required for compliance with Division rules, decisions, and orders for services rendered on and after the effective date, or after the effective date or the adoption date of the revised Medicare component, whichever is later.

Proposed amended §134.402(e) establishes that regardless of billed amount, reimbursement methods shall be determined in the following order. The first method is in proposed amended §134.402(e)(1), which states that reimbursement is the amount for the service that is included in a specific fee schedule in a contract that complies with the requirements of Labor Code §413.011. The second method is provided in proposed

§134.402(e)(2), which states that if no contracted fee schedule exists that complies with Labor Code §413.011, the maximum allowable reimbursement (MAR) amount is as described under subsection (f) of the section, including reimbursements for implantables. The last method is addressed in proposed amended §134.402(e)(3) and provides that if no contracted fee schedule exists that complies with Labor Code §413.011, and an amount cannot be determined by application of the formula to calculate the MAR as outlined in subsection (f) of the section, then reimbursement shall be determined in accordance with §134.1 (relating to Medical Reimbursement).

Proposed amended §134.402(f) requires that the reimbursement calculation used for establishing the MAR shall be the Medicare ASC reimbursement amount determined by applying the most recently adopted and effective Medicare Payment System Policies for Services Furnished in Ambulatory Surgical Centers and Outpatient Prospective Payment System reimbursement formula and factors as published annually in the *Federal Register*. Reimbursement shall be based on the fully implemented payment amount as in ADDENDUM AA, ASC COVERED SURGICAL PROCEDURES FOR CY 2008, as published in the November 27, 2007 publication of the *Federal Register*, or its successor.

Proposed new §134.402(f)(1) allows two payment structures. The first reimbursement for non-device intensive procedures is proposed to be the Medicare ASC facility reimbursement amount multiplied by 235 percent. In the alternative, if an ASC facility or surgical implant provider requests separate reimbursement for an implantable, reimbursement for the non-device intensive procedure is proposed to be the sum of two parts. The first part is the lesser of the manufacturer's invoice amount or the net amount (exclusive of rebates and discounts) plus 10 percent or \$1,000 per billed item add-on, whichever is less, but not to exceed \$2,000 in add-on's per admission. The second part is the Medicare ASC facility reimbursement amount multiplied by 153 percent.

Proposed new §134.402(f)(2) allows a proposed reimbursement for device intensive procedures to be the sum of the ASC device portion, and the ASC service portion multiplied by 235 percent. It also provides that if an ASC facility or surgical implant provider requests separate reimbursement for an implantable, reimbursement for the device intensive procedure shall be the sum of the lesser of the manufacturer's invoice amount or the net amount (exclusive of rebates and discounts) plus 10 percent or \$1,000 per billed item add-on, whichever is less, but not to exceed \$2,000 in add-on's per admission and the ASC service portion multiplied by 235 percent.

Proposed amended §134.402(g) states that a facility, or surgical implant provider with written agreement of the facility, may request separate reimbursement for an implantable. Proposed amended §134.402(g)(1) provides that the facility or surgical implant provider requesting reimbursement for the implantable shall bill for the implantable on the Medicare-specific billing form for ASCs; attach a copy of the manufacturer's invoice, or vendor's invoice to the ASC facility or surgical implant provider; and include with the billing a certification that the amount billed represents the actual cost as specified in the text. Proposed new §134.402(g)(2) states that an insurance carrier may use the audit process under §133.230 (relating to Insurance Carrier Audit of a Medical Bill) to seek verification that the amount certified under paragraph (1) properly reflects the requirements of this subsection. Such verification may also take place

in the Medical Dispute Resolution process under §133.307 (relating to MDR of Fee Dispute), if that process is properly requested, notwithstanding §133.307(d)(2)(B). Proposed new §134.402(g)(3) provides that nothing in the rule precludes an ASC or insurance carrier from utilizing a surgical implant provider to arrange for the provision of implantable devices and that implantables provided by such a surgical implant provider shall be reimbursed according to the subsection.

Proposed new §134.402(h) establishes that for medical services provided in an ASC, but not addressed in the Medicare payment policies as outlined in subsection (f) of the section, and for which Medicare reimburses using other Medicare fee schedules, reimbursement shall be made using the applicable Division Fee Guideline in effect for that service on the date the service was provided.

Proposed new §134.402(i) provides that if Medicare prohibits a service from being performed in an ASC setting, the insurance carrier, health care provider, and ASC may agree, on a voluntary basis, to an ASC facility setting. Proposed new §134.402(i)(1) states that the agreement may occur before or during preauthorization. Proposed amended subsection (i)(2) also sets forth that a preauthorization request may be submitted for an ASC setting only if an agreement has already been reached and a copy of the signed agreement is filed as a part of the preauthorization request. Proposed amended subsection (i)(3) provides that the agreement between the insurance carrier and the ASC must be in writing and include the reimbursement amount; any other provisions of the agreement; and names, titles, and signatures of both parties, with dates. Proposed amended subsection (i)(4) states that copies of the agreement are to be kept by both parties and that the agreement does not constitute a voluntary network established in accordance with Labor Code §413.011(d-1). Proposed amended (i)(5) provides that copies of the agreement are to be kept by both parties and that upon request of the Division, the agreement information shall be submitted in the form and manner prescribed by the Division.

Proposed new §134.402(j) establishes the severability of this section and states, if a court of competent jurisdiction holds that any provision of the section is inconsistent with any statutes of this state, are unconstitutional, or are invalid for any reason, the remaining provisions of the section shall remain in full effect.

Mr. Matthew Zurek, Executive Deputy Commissioner for Policy and Research, has determined that for each year of the first five years the proposed amended section will be in effect, there will be minimal fiscal implication for state government as a result of enforcing or administering the proposed amendments.

Increased costs may include expenses associated with the preparation of training materials and presentation of training programs for Division staff and other system participants, and costs associated with monitoring the Medicare payment policies. There will be no fiscal implications for local governments as a result of enforcing or administering the proposed amendments because they do not enforce or administer the rule.

Local government and state government as a covered regulated entity will be impacted in the same manner as persons required to comply with the proposed amendments, as described later in this preamble.

Mr. Zurek has also determined that for each year of the first five years the sections are in effect, the proposed amendments will not have a measurable effect on local employment or the local economy as a result of the proposed amendments.

Mr. Zurek has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated is a reimbursement system with a well-known, standardized structure for delivery of quality medical care with effective cost control, that will provide positive benefits to all participants in the system: injured employees, employers, insurance carriers, and health care providers. The Division does not anticipate an increase in disputes as a result of this proposed amended rule because the Medicare reimbursement methodologies are well known and well documented. If an increase in dispute activity were to occur, it would likely be transient in nature. Reimbursement for some services will increase and some may decrease based on the new APC relativities. Aggregate medical costs will likely increase in the system, as these proposed amendments establish a reimbursement methodology and amount for services that are currently reimbursed in the aggregate at lower fees under the existing reimbursement methodology. Additionally, in establishing the fee guidelines, providers benefit from the increased security of payment afforded by the Labor Code.

Adoption of the most current Medicare ASC policies allows a broader range of services to be provided by ASCs. This may foster competition between various health care providers. This could lead to downward price pressures as well as quality improvements. A number of other factors could affect the impact including the frequency of injury, severity of injury, change in the practice of medicine for injured workers in Texas, distribution of services provided, current billing practices, and random fluctuations.

Use of standardized coding, reporting, billing, and reimbursement methodologies in the rules as proposed is expected to maintain consistency and standardization in the Texas workers' compensation system with the typical billing requirements used in Medicare and the group health systems.

Insurance carriers should not experience a significant increase in medical benefit costs as a result of increased unit prices. ASC costs directly related to historical Texas workers' compensation utilization are expected to increase approximately 23 percent in CY 2008, 38 percent in CY 2009, with increases in CY 2010 and CY 2011 limited to the annual increases made in the CPI-U which are incorporated in the Medicare ASC reimbursement rules. ASC reimbursement accounts for less than five percent of total Texas workers' compensation system medical benefit payments. Medical benefit impact is anticipated to average less than a one percent increase in medical benefit costs by the end of CY 2009. Any realignment of services to an ASC from a more expensive site of service as a result of the new reimbursement could potentially offset a portion of the increase.

Medical services are a significant portion of benefit costs employers pay through workers' compensation insurance premiums or directly through self-insurance programs. These amendments are unlikely to significantly impact overall medical costs, and employers should not see any increase in premium costs directly as a result of the proposed amendments. Improved access to ASC services for injured employees may provide indirect benefits to the employer. Benefits could include improved recovery and return to work outcomes that should be favorably reflected in the cost of doing business. In addition, the amended rule facilitates the appropriate use of all the resources available to health care providers.

Because the reimbursement methodology is based on the relative costs required to provide a service, reimbursements under the proposed amendments are more closely related to the

resources required to provide the services. The alignment of ASC reimbursement with the most current Medicare ASC system yields more consistent reimbursement results and makes the Texas workers' compensation system more comparable to other health care systems and should discourage overutilization of services. This will benefit injured employees by preventing unnecessary treatment and delayed return to work.

Injured Employees

There will be no economic costs to injured employees, as this proposed rule does not impose any requirements on injured employees. Injured employees will have access to an expanded number of services that may be performed in the ASC setting. Additionally, injured employees will benefit from access to timely and quality medical care.

Employers

Employers who purchase workers' compensation insurance should experience no direct economic impact from the requirement to comply with these proposed rule amendments because there is no additional administrative requirement for the employer. However, employers are subject to premium rates that may be impacted by overall system costs. Since ASC services account for less than five percent of overall Texas workers' compensation medical benefit costs, the change in reimbursement structure is anticipated to increase overall reimbursement by less than two percent. The change in reimbursement structure and the expansion of services allowed to be performed in ASC settings is anticipated to increase ASC reimbursement. Some costs may be offset if services are shifted from other health care provider settings to a less costly ASC setting. Therefore, even though ASC facility reimbursement rates are proposed to be increased, the relatively small ASC volume combined with possible net savings from relocation of services to the less costly ASC setting, it is unlikely that premium costs will be negatively impacted in any significant amount.

Insurance Carriers

Insurance carriers have already incurred the start up costs for processing reimbursements on a basis consistent with Medicare, to comply with the previously adopted ASC rule and §134.403 of this title, so there should be minimal additional adjustment costs to process ASC claims under this proposal.

Most workers' compensation insurance carriers, including the 178 that qualify as small businesses in CY 2006, will experience an increase in medical benefit costs as a result of increased unit prices. These increases are dependent on an insurance carrier's specific mix of workers' compensation injuries, the severity of those injuries, health care providers rendering the services and past business practices.

Self-insured employers who self-administer and perform their own medical bill review should not experience significant costs related to compliance. These employers have already incurred the start up costs for processing reimbursements on a basis consistent with Medicare in order to comply with the current rule adopted in 2004 and in §134.403 of this title which uses the same grouping methodology, so there should be minimal additional adjustment costs to process ASC claims under this proposal.

Self-insured employers who outsource claims adjusting and/or medical bill review costs may be impacted based on their vendor relationships. If the vendor reprices bills for ASC services for commercial and/or workers' compensation patients, the costs should be minimal.

According to Division records, there are no self-insured employers that would be considered small or micro businesses. Therefore, there are no small or micro business self-insured employers impacted by these proposed amendments

Because the reimbursement methodology is based on the relative costs required to provide a service, reimbursements under the proposed amendments are more closely related to the resources required to provide the services. The alignment of ASC reimbursement with the Medicare system makes the Texas workers' compensation system more comparable to other health care systems and should discourage overutilization of services. Additionally, the adoption of the most current Medicare ASC reimbursement methodology better aligns all facility reimbursement structures and sets a general hierarchy of reimbursement relative to costs.

Health Care Providers

There are approximately 380 ASCs in Texas, of which approximately 127 are small businesses and approximately 187 are micro businesses.

Surgical implant providers that choose to directly bill a workers' compensation insurance carrier for the cost of implants may experience costs associated with Chapter 133 of this title. It is necessary that the sections in Chapter 133 apply to a billing party, because those sections provide the processes for bill auditing and dispute resolution.

Use of standardized coding, reporting, billing, and reimbursement methodologies in the rule as proposed is expected to decrease fee disputes within the workers' compensation system after a period of time for system participants to become familiar with the system.

Although some ASCs may not currently participate in the Medicare system, there are no additional requirements for these ASCs to bill for services provided in the Texas workers' compensation system. ASCs are instructed to bill their usual and customary charges; therefore ASCs are not required to calculate Medicare reimbursement in order to bill for services.

Doctors practicing in ASCs may derive organizational and operational benefits as a result of the proposed amended rule. The expanded list of services allowed in an ASC facility setting provides doctors with additional flexibility in scheduling their use of ASC facilities. Increased facility reimbursement for the previously approved procedures should allow doctors to schedule procedures that were not profitable for the ASC. The combination of these two factors may provide opportunities for doctors to coordinate their practice and further integrate care of injured employees with their group health practice patterns.

The Division estimates that the proposed amendment will result in an aggregate increase in ASC facility payments when applied to historical workers' compensation system ASC claim costs. Aggregate increase for ASC facility payments is approximately \$5 million or 23 percent in CY 2008 and \$14.9 million or 38 percent in CY 2009 when applied to historical workers' compensation ASC payments.

The Division projects a similar impact on future aggregate claim costs, assuming that there is not a significant shift in the distribution of claims. A number of other factors could affect the impact including frequency of injury, severity of injury, changes in the practice of medicine for injured workers in Texas, in part due to adoption of evidence-based treatment guidelines, distribution of

services provided, current billing practices, and random fluctuations.

There will be no difference in the cost of compliance between a large, small or micro business as a result of the proposed amendments. Based upon the cost of labor per hour, there is no disproportionate economic impact on small or micro-businesses. Even if the proposed amendments would have an adverse effect on small or micro-businesses, it is neither legal nor feasible to waive the provisions of the proposed amendments for small or micro-businesses because the Labor Code requires equal application of these provisions to all affected entities and individuals.

The Division also considered not adopting the proposed amendments, implementing different requirements or standards for the affected small and micro-businesses, and exempting small and micro-businesses from the requirements of the proposed amendments.

Not adopting the proposal amendments. The Division rejected this approach because it would not comply with the requirements of Labor Code §413.011, which establishes the requirements for Division fee guidelines for medical services including adopting the most current reimbursement models and values or weights used by CMS.

Implementing different requirements or standards for the affected small or micro-businesses. The Division rejected this because the statutory framework of the Workers' Compensation Act and Division rules require a standardized reimbursement structure in order to maintain consistent access to care for injured employees.

Exempting small and micro-businesses from the requirements of the proposed amendments. The Division rejected this approach because it would neither comply with the requirements of Labor Code §413.011 nor the requirement to maintain a standardized reimbursement structure.

The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on July 14, 2008. Comments may be submitted via the Internet through the Division's Internet website at <http://www.tdi.state.tx.us/wc/rules/proposedrules/toc.html> or by mailing or delivering your comments to Victoria Ortega, Legal Services, MS-4D, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744.

The Commissioner will consider the proposed new section in a public hearing at 1:30 p.m. on July 1, 2008, in Room 1.107A, 7551 Metro Center Drive, Austin, Texas 78744. Written and oral comments presented at the hearing will be considered.

The amendments are proposed under the Texas Labor Code §§408.021, 408.027, 408.031, 413.002, 413.007, 413.011, 413.012, 413.0511, 413.013, 413.014, 413.015, 413.016, 413.017, 413.019, 413.031; 413.041, 413.053, 402.0111, and 402.061. Section 408.021 entitles injured employees to all health care reasonably required by the nature of the injury as and when needed. Section 408.027 sets out the process for payment of health care providers. Section 408.031 provides that an injured employee may receive benefits under a workers'

compensation network established under Chapter 1305 of the Insurance Code. Section 413.002 requires the Division to monitor health care providers, insurance carriers and claimants to ensure compliance with rules adopted by the Commissioner of workers' compensation, including fee guidelines. Section 413.007 sets out information to be maintained by the Division. Section 413.011 mandates that the Division establish medical policies and guidelines by rule. Section 413.012 requires the Division to review and revise the medical policies and fee guidelines at least every two years to reflect fair and reasonable fees. Section 413.013 requires the Division by rule to establish programs related to health care treatments and services for dispute resolution, monitoring, and review. Section 413.014 requires preauthorization by the insurance carrier for health care treatments and services. Section 413.015 requires insurance carriers to pay charges for medical services as provided in the statute and requires that the Division ensure compliance with the medical policies and fee guidelines through audit and review. Section 413.016 provides for refund of payments made in violation of the medical policies and fee guidelines. Section 413.017 provides a presumption of reasonableness for medical services fees that are consistent with the medical policies and fee guidelines. Section 413.019 provides for payment of interest on delayed payments refunds or overpayments. Section 413.031 provides a procedure for medical dispute resolution. Section 413.041 requires health care practitioners and health care providers to submit certain financial disclosure information to the Division. Section 413.0511 requires the Medical Advisor to make recommendations regarding the adoption of rules and policies to develop, maintain, and review guidelines as provided by Section 413.011. Section 413.053 establishes the standards of reporting and billing. Section 402.00111 provides that the Commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides that the Commissioner of workers' compensation has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following statutes are affected by this proposal: Labor Code §§408.021, 408.027, 408.031, 413.002, 413.007, 413.011, 413.012, 413.013, 413.014, 413.015, 413.016, 413.017, 413.019, 413.031, 413.041, 413.0511, and 413.053.

§134.402. Ambulatory Surgical Center Fee Guideline.

(a) Applicability of this rule is as follows:

(1) This section applies to facility services provided on or after September 1, 2008 by an ambulatory surgical center (ASC), other than professional medical services.

(2) This section does not apply to:

(A) professional medical services billed by a health care provider not employed by the ASC, except for a surgical implant provider as described in this section; or

(B) medical services provided through a workers' compensation health care network certified pursuant to Insurance Code Chapter 1305, except as provided in Insurance Code Chapter 1305.

[(2) This section applies to facility services provided by an ASC on or after September 1, 2004. The provisions of subsection (e)(2), (3), and (4), and subsection (f) of this section apply to facility services provided by an ASC on or after April 1, 2005. This section shall not apply to facility services provided by an ASC on or after September 1, 2008.]

[(3) Specific provisions contained in the Texas Workers' Compensation Act (Act) or Texas Department of Insurance, Division of Workers' Compensation (Division) rules, including this rule, shall take precedence over any conflicting provision adopted or utilized by the Centers for Medicare and Medicaid Services (CMS) in administering the Medicare program. Exceptions to Medicare payment policies for medical necessity may be provided by Division rule. Independent Review Organization (IRO) decisions regarding medical necessity are made on a case-by-case basis. The Division will monitor IRO decisions to determine whether Division rulemaking action would be appropriate.]

[(4) Except as provided in subsection (b) of this section, whenever a component of the Medicare program is revised and effective, use of the revised component shall be required for compliance with Division rules, decisions and orders for services rendered on or after the effective date of the revised component.]

(b) Definitions for words and terms, when used in this section, shall have the following meanings, unless clearly indicated otherwise.

(1) "Ambulatory Surgical Center" means a health care facility appropriately licensed by the Texas Department of State Health Services.

(2) "ASC device portion" means the portion of the ASC payment rate that represents the cost of the implantable device, and is calculated by applying the Centers for Medicare and Medicaid Services (CMS) Outpatient Prospective Payment System (OPPS) device offset percentage to the OPPS payment rate.

(3) "ASC service portion" means the Medicare ASC payment rate less the device portion.

(4) "Device intensive procedure" means an ASC covered surgical procedure that has been designated by CMS as device intensive in TABLE 56-ASC COVERED SURGICAL PROCEDURES DESIGNATED AS DEVICE INTENSIVE FOR CY 2008 or its successor.

(5) "Implantable" means an object or device that is surgically:

(A) implanted,

(B) embedded,

(C) inserted,

(D) or otherwise applied, and

(E) related equipment necessary to operate, program, and recharge the implantable.

(6) "Medicare payment policy" means reimbursement methodologies, models, and values or weights including its coding, billing, and reporting payment policies as set forth in the Centers for Medicare and Medicaid Services (CMS) payment policies specific to Medicare.

(7) "Surgical implant provider" means a person that arranges for the provision of implantable devices to a health care facility and that then seeks reimbursement for the implantable devices provided directly from an insurance carrier.

(c) A surgical implant provider is subject to Chapter 133 of this title and is considered a health care provider for purposes of this section and the sections in Chapter 133.

(d) [(b)] For coding, billing, and reporting, of facility services covered in this rule, Texas workers' compensation system participants shall apply the Medicare payment [program coding, billing, and reporting] policies in effect on the date a service is provided with any

additions or exceptions specified in this section, including the following paragraphs. [For reimbursement of facility services covered in this rule, Texas workers' compensation system participants shall apply the reimbursement provisions of this section and the Medicare program reimbursement methodologies, models, and values or weights that were in effect on the earlier of the date a service is provided or December 31, 2007.]

(1) Specific provisions contained in the Labor Code or the Texas Department of Insurance, Division of Workers' Compensation (Division) rules, including this chapter, shall take precedence over any conflicting provision adopted or utilized by the CMS in administering the Medicare program.

(2) Independent Review Organization decisions regarding medical necessity made in accordance with Labor Code §413.031 and §133.308 of this title (relating to MDR by Independent Review Organizations), which are made on a case-by-case basis, take precedence in that case only, over any Division rules and Medicare payment policies.

(3) Whenever a component of the Medicare program is revised and effective, use of the revised component shall be required for compliance with Division rules, decisions, and orders for services rendered on and after the effective date, or after the effective date or the adoption date of the revised Medicare component, whichever is later.

[(e) To determine the maximum allowable reimbursement (MAR) for a particular service, system participants shall apply the Medicare payment policies for these services and the Medicare ASC reimbursement amount multiplied by 213.3%.]

[(d) In all cases, reimbursement shall be the lesser of the:]

[(1) MAR amount regardless of billed amount; or]

[(2) facility's and payer's workers' compensation negotiated and/or contracted amount that applies to the billed service(s).]

(e) Regardless of billed amount, reimbursement shall be:

(1) the amount for the service that is included in a specific fee schedule set in a contract that complies with the requirements of Labor Code §413.011; or

(2) if no contracted fee schedule exists that complies with Labor Code §413.011, the maximum allowable reimbursement (MAR) amount under subsection (f) of this section, including any reimbursement for implantables.

(3) If no contracted fee schedule exists that complies with Labor Code §413.011, and an amount cannot be determined by application of the formula to calculate the MAR as outlined in subsection (f) of this section, reimbursement shall be determined in accordance with §134.1 of this title (relating to Medical Reimbursement).

[(e) Exceptions and modifications to the Medicare payment policies are as follows:]

[(1) Whenever Medicare requires a payment policy change to be retroactive, that change shall only apply to services provided on or after the date of that change.]

[(2) In addition to the ASC List of Medicare Approved Procedures, the following procedures will be reimbursed when provided in an ASC at the reimbursement rate provided by this section as if they were on that list (using the same Medicare group assignment values):]

[(A) 41750 - Group 4]

[(B) 41760 - Group 4]

[(C) 20552 - Group 4]

[(D) 20526 - Group 4]

[(E) 27599 - Group 4]

[(F) 29873 - Group 3]

[(G) 29999 - Group 4]

[(H) 63030 - Group 6]

[(I) 64405 - Group 4]

[(J) 64999 - Group 4]

[(3) If a service is not included on the ASC List of Medicare Approved Procedures or listed in subsection (e)(2) of this section, the insurance carrier (carrier), health care provider, and ASC may agree to an ASC setting as follows:]

[(A) The agreement may occur before, during, or after preauthorization.]

[(i) A preauthorization request may be submitted for an ASC setting only if an agreement has already been reached and a copy of the signed agreement is filed as a part of the preauthorization request.]

[(ii) A preauthorization request or approval for a non-ASC facility setting may be revised to an ASC setting by written agreement of the carrier and the health care provider during or after preauthorization.]

[(B) The agreement between the carrier and the ASC must be in writing, in clearly stated terms, and include:]

[(i) the reimbursement amount;]

[(ii) any other provisions of the agreement; and]

[(iii) names, titles and signatures of both parties with dates.]

[(C) Copies of the agreement are to be kept by both parties.]

[(D) Upon request of the Division, the agreement information shall be submitted in the form and manner prescribed by the Division.]

[(4) The carrier shall reimburse all surgically implanted, inserted, or otherwise applied devices at the lesser of the manufacturer's invoice amount or the net amount (exclusive of rebates and discounts) actually paid for such device to the manufacturer by the ASC. Provider billing shall include a certification that the amount sought represents its actual cost (net amount, exclusive of rebates and discounts). That certification shall include the following sentence: "I hereby certify under penalty of law that the following is the true and correct actual cost to the best of my knowledge."]

(f) The reimbursement calculation used for establishing the MAR shall be the Medicare ASC reimbursement amount determined by applying the most recently adopted and effective Medicare Payment System Policies for Services Furnished in Ambulatory Surgical Centers and Outpatient Prospective Payment System reimbursement formula and factors as published annually in the Federal Register. Reimbursement shall be based on the fully implemented payment amount as in ADDENDUM AA, ASC COVERED SURGICAL PROCEDURES FOR CY 2008, published in the November 27, 2007 publication of the Federal Register, or its successor. The following minimal modifications apply:

(1) Reimbursement for non-device intensive procedures shall be:

(A) The Medicare ASC facility reimbursement amount multiplied by 235 percent; or

(B) if an ASC facility or surgical implant provider requests separate reimbursement for an implantable, reimbursement for the non-device intensive procedure shall be the sum of:

(i) the lesser of the manufacturer's invoice amount or the net amount (exclusive of rebates and discounts) plus 10 percent or \$1,000 per billed item add-on, whichever is less, but not to exceed \$2,000 in add-on's per admission; and

(ii) the Medicare ASC facility reimbursement amount multiplied by 153 percent.

(2) Reimbursement for device intensive procedures shall be:

(A) the sum of:

(i) the ASC device portion; and

(ii) the ASC service portion multiplied by 235 percent; or

(B) If an ASC facility or surgical implant provider requests separate reimbursement for an implantable, reimbursement for the device intensive procedure shall be the sum of:

(i) the lesser of the manufacturer's invoice amount or the net amount (exclusive of rebates and discounts) plus 10 percent or \$1,000 per billed item add-on, whichever is less, but not to exceed \$2,000 in add-on's per admission; and

(ii) the ASC service portion multiplied by 235 percent.

[(f) A carrier may use the audit process under §133.230 of this title (relating to Insurance Carrier Audit of a Medical Bill) to seek verification that the amount certified under subsection (e)(4) of this section properly reflects the actual cost standard contained in that subsection. Such verification may also take place in the Medical Dispute Resolution process under §133.307 of this title (relating to MDR of Fee Dispute), if that process is properly requested.]

(g) A facility, or surgical implant provider with written agreement of the facility, may request separate reimbursement for an implantable.

(1) The facility or surgical implant provider requesting reimbursement for the implantable shall:

(A) bill for the implantable on the Medicare-specific billing form for ASCs;

(B) attach a copy of the manufacturer's invoice, or vendor's invoice to the ASC facility or surgical implant provider; and

(C) include with the billing a certification that the amount billed represents the actual cost (net amount, exclusive of rebates and discounts) for the implantable. The certification shall include the following sentence: "I hereby certify under penalty of law that the following is the true and correct actual cost to the best of my knowledge," and shall be signed by an authorized representative of the facility or surgical implant provider who has personal knowledge of the cost of the implantable and any rebates or discounts to which the facility or surgical implant provider may be entitled.

(2) An insurance carrier may use the audit process under §133.230 of this title (relating to Insurance Carrier Audit of a Medical Bill) to seek verification that the amount certified under paragraph (1) of this subsection properly reflects the requirements of this subsection. Such verification may also take place in the Medical Dis-

pute Resolution process under §133.307 of this title (relating to MDR of Fee Dispute), if that process is properly requested, notwithstanding §133.307(d)(2)(B) of this title.

(3) Nothing in this rule precludes an ASC or insurance carrier from utilizing a surgical implant provider to arrange for the provision of implantable devices. Implantables provided by a surgical implant provider shall be reimbursed according to this subsection.

(h) For medical services provided in an ASC, but not addressed in the Medicare payment policies as outlined in subsection (f) of this section, and for which Medicare reimburses using other Medicare fee schedules, reimbursement shall be made using the applicable Division Fee Guideline in effect for that service on the date the service was provided.

(i) If Medicare prohibits a service from being performed in an ASC setting, the insurance carrier, health care provider, and ASC may agree, on a voluntary basis, to an ASC setting as follows:

(1) The agreement may occur before, or during, preauthorization.

(2) A preauthorization request may be submitted for an ASC facility setting only if an agreement has already been reached and a copy of the signed agreement is filed as a part of the preauthorization request.

(3) The agreement between the insurance carrier and the ASC must be in writing, in clearly stated terms, and include:

(A) the reimbursement amount;

(B) any other provisions of the agreement; and

(C) names, titles and signatures of both parties with dates.

(4) Copies of the agreement are to be kept by both parties. This agreement does not constitute a voluntary network established in accordance with Labor Code §413.011(d-1).

(5) Upon request of the Division, the agreement information shall be submitted in the form and manner prescribed by the Division.

[(g)] Where any terms or parts of this section or its application to any person or circumstance are determined by a court of competent jurisdiction to be invalid, the invalidity does not affect other provisions or applications of this section that can be given effect without the invalidated provision or application.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 30, 2008.

TRD-200802809

Norma Garcia

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: July 13, 2008

For further information, please call: (512) 804-4715

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 4. SCHOOL LAND BOARD

CHAPTER 155. LAND RESOURCES

SUBCHAPTER A. COASTAL PUBLIC LANDS

31 TAC §§155.1 - 155.5, 155.15

The School Land Board (board) proposes amendments to 31 TAC, Part 4, Chapter 155, relating to Land Resources, Subchapter A, relating to Coastal Public Lands, §155.1 relating to General Provisions, §155.2 relating to Leases, §155.3 relating to Easements, §155.4 relating to Permits, §155.5 relating to Registration of Structures and §155.15 relating to Fees.

The intent of this rulemaking is to clarify the rules and avoid duplication by deleting provisions that incorporate specific language from applicable statutes or standard contract provisions. The proposed amendments also incorporate new definitions to address the use of coastal public land for the construction of watercraft storage facilities associated with private residences. The proposed amendments add applicable fees for such uses, provide the board with discretion to negotiate fees for coastal leases for public purposes, and implement a fee freeze for grantees who are 65 or older and using their property for private, residential purposes. Finally, some of the proposed amendments are necessitated by statutory changes made during the 80th Legislature by House Bill (HB) 2819 (Acts 2007, 80th Leg., Ch. 1256, eff. Sept. 1, 2007) which amended Texas Natural Resources Code §§33.002, 33.012, 33.063, and 33.102 - 105 and repealed §33.014 and §33.110(b).

BACKGROUND AND SECTION-BY-SECTION ANALYSIS OF PROPOSED AMENDMENTS

Section 155.1 (relating to General Provisions) includes provisions relating to board policies, the scope of Chapter 155, the timing of board decisions, definitions, and the Coastal Management Program (CMP). The proposed amendments to §155.1 incorporate and amend, as applicable, general policies previously found in §§155.2(c)(5) (relating to Leases), 155.2(c)(7) (relating to Leases), 155.3(d) (relating to Easements), and 155.15(b)(2)(I) (relating to Fees), as these policies are general in nature and apply to Chapter 155 in its entirety. Amendments to these policies incorporate statutory changes made by HB 2819, clarify original language, or change language to conform the policy to Chapter 155 in its entirety. Specifically, the proposed amendments to §155.1(a) include policies restricting rights in the surface estate of coastal public lands from unduly preventing or interfering with the board's management or administration of coastal public lands or the board's authority to grant other rights to coastal public land; authorizing the GLO to inspect any structure located on coastal public land at any time; requiring grantees to provide a coastal boundary survey and field notes in conjunction with shoreline alteration projects, as indicated by Texas Natural Resources Code §33.136; and authorizing the board to waive the requirements of any rule or fee in Chapter 155 if such action would be in the public's best interest, as indicated by Texas Natural Resources Code §32.061 and §32.062.

The proposed amendments to §155.1 add language authorizing the board to grant an interest in coastal public lands for any purpose that the board determines is in the best interest of the state, in accordance with changes made to Texas Natural Resources Code §33.103 by HB 2819. Finally, the proposed amendments to §155.1 expand the definition section by incorporating all applicable definitions previously included in §155.15 (relating to Fees) in order to have one major definition section, which will provide clarity for the public. Where a single term had two separate definitions, the definitions were combined or modified so

that one definition applied to the entire Chapter. The proposed amendments also add new definitions for the terms boathouse, boatlift, boat-skid, boat slip, coastal natural resource area, dilapidated or derelict structure, personal watercraft, oversized personal watercraft slip, personal watercraft slip, riprap, sewage, watercraft, and watercraft storage facility. Other definitions have been amended to clarify meaning and assist the public in understanding the rules. The proposed amendments also add a new §155.1(f) regarding the requirement of grantees to submit an application to the GLO in order to obtain a lease, easement, or permit for the use of coastal public land, as indicated by Texas Natural Resources Code §33.101 and §33.102. Finally, conforming numbering and lettering changes and adjustments required for the consistent use of abbreviations have been made.

Section 155.2 (relating to Leases) includes provisions related to definitions, application requirements, lease conditions, and renewal and termination of leases. The proposed amendments clarify these provisions and incorporate a requirement to provide an e-mail address, if available, on a lease application. The proposed amendments also delete provisions that are included as standard provisions in all lease agreements, and, as mentioned previously, delete §155.2(c)(5) and §155.2(c)(7) because those provisions are more appropriately modified to apply to all interests in coastal public land and therefore should be included in §155.1 (relating to General Provisions). Finally, conforming numbering and lettering changes and adjustments required for the consistent use of abbreviations have been made.

Section 155.3 (relating to Easements) includes provisions related to the granting of easements in coastal public land, criteria for the granting of such easements, and mitigation. The proposed amendments delete §155.3(d) because the proposed amendments now incorporate this information in §155.1(f) (relating to General Provisions). This deletion is consistent with current procedures and incorporates amendments made to Texas Natural Resources Code §33.104 by HB 2819. The contents of coastal easement applications may be adequately addressed by GLO operating procedures. The proposed amendments also add references to watercraft storage facilities in what is now §155.3(f)(4) in order to conform the rules to current board policies. A new §155.3(f)(4)(d) has been added to clarify that a littoral owner of property used for a private residence may, in certain limited instances, construct additional watercraft storage facilities on coastal public land. The proposed amendments delete §155.3(j)(1) - (m)(2) because these provisions are standard easement terms in all easements. Finally, conforming numbering and lettering changes, minor clarification changes, and adjustments required for the consistent use of abbreviations have been made.

Section 155.4 (relating to Permits) includes provisions relating to the issuance of permits for the use of previously unauthorized structures (cabins) on coastal public land. Proposed changes made to §155.4(c), (d) and (g) delete provisions that incorporate certain statutory requirements found in Chapter 33, Texas Natural Resources Code in order to avoid duplication of the statutes. The proposed amendments also delete §155.4(i), (j), and (n) because these conditions are standard in all permits. Finally, conforming numbering and lettering changes and adjustments required for the consistent use of abbreviations have been made.

Section 155.5 (relating to Registration of Structures) addresses the requirements for the registration of structures that may be constructed on coastal public land without prior approval from the board, in accordance with Texas Natural Resources Code

§33.115. The proposed amendments to §155.5(e)(5) add references to boathouses, boat-skids, boat slips, and personal watercraft slips in order to clearly define standards that allow for the registration of piers and associated appurtenances. Finally, adjustments required for the consistent use of abbreviations have been made.

Section 155.15 (relating to Fees) addresses general provisions related to fees for the use of coastal public land, definitions, the fees assessed for the use of coastal public land, and implementation procedures. As mentioned previously, the proposed amendments relocate all applicable definitions from §155.15 to §155.1 (relating to General Provisions) in order to have one comprehensive definition section, which will provide clarity for the public. The proposed amendments delete limitations in §155.15(b)(2)(A) and clarify the board's authority to negotiate fees for coastal leases granted for public purposes in accordance with changes made to Texas Natural Resources Code §33.105 in HB 2819. The proposed amendments also amend §155.15(b)(2)(D) to incorporate fees for additional boatlifts, boathouses, and oversized personal watercraft slips related to a private residence in an effort to provide the public with a more comprehensive fee policy concerning watercraft storage facilities at private residences and to incorporate amendments to new §155.3(f)(4)(d). Although the board has historically reviewed on a case-by-case coastal easements for the construction of additional boatlifts, boathouses, and oversized personal watercraft slips related to a private residence on coastal public land, requests for additional structures have increased dramatically in recent years. The proposed amendments to §155.15(b)(2)(D) will provide clarity for the board and the public regarding the ability of certain grantees to construct additional watercraft storage facilities on coastal public land. Before granting authority beyond what is authorized by new §155.3(f)(4)(C) (relating to Easements), the board may weigh factors such as the location, density, and environmental health of the area, as specified in new §155.3(f)(4)(A) and (B) (relating to Easements). The proposed amendments also delete language in §155.15 relating to the board's authority to reduce or waive fees if such action would be in the best interest of the public, as this provision was amended and relocated in §155.1 (relating to General Provisions), as described above. The proposed amendments also add a new §155.15(b)(10), which prohibits the board from increasing coastal easement fees related to a private residence when the grantee reaches the age of 65 and applies to the GLO for such a freeze, unless the area of encumbered state land increases or the use of the coastal public land changes. Finally, conforming numbering and lettering changes and adjustments required for the consistent use of abbreviations have been made.

FISCAL AND EMPLOYMENT IMPACTS

Mr. Rene Truan, Deputy Commissioner for the GLO's Professional Services Program Area, has determined that for each year of the first five years the amended sections as proposed are in effect there will be no additional cost to state government as a result of enforcing or administering the amended sections. Enforcement and administration of the proposed amendments to §155.15 could cause either an increase or decrease in state revenue, as the board will be authorized to negotiate fees for the public use of coastal public land, implement new fees for the construction of certain additional watercraft storage facilities related to a private residence, and freeze certain coastal easement fees for grantees aged 65 or older who are using their property for a private residence.

Mr. Truan has determined that for each year of the first five years the amended sections as proposed are in effect there will be no fiscal implications for local governments as a result of enforcing or administering the amended sections.

Mr. Truan has also determined that for each year of the first five years the amended sections as proposed are in effect there will be no increase in economic costs to small business for compliance, as the fee amendments apply only to coastal leases and coastal easements for the construction of watercraft storage facilities related to a private residence.

The board has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Mr. Truan has determined that the public will benefit from the proposed amendments because the GLO will be able to administer the coastal public land program more efficiently, providing the public more certainty and clarity in the process. The public will benefit from the reduction in the number and length of the Chapter 155 rules, and will be able to avoid duplicative requirements previously found in Chapter 33, Texas Natural Resources Code, 31 TAC Chapter 155, GLO policies, and contracts. Members of the public who use their property for a private residence will benefit from the proposed rules because they are now clearly authorized by the rules to apply for an easement to construct certain additional watercraft storage facilities on coastal public land. The addition of a new fee for the construction of certain additional watercraft storage facilities is required to compensate the state for this additional impact to coastal public land, and the general public will benefit from the balance provided by the fee. Entities desiring to obtain a public use coastal lease will benefit because restrictions on the entities who could previously apply for such a lease have been removed. The change in fees for such leases to be negotiable with the board allows both the public and the board to weigh and consider the public use being implemented and charge a lesser or higher amount, as appropriate. Finally, persons aged 65 and older who are using their property for a private residence will benefit from the proposed amendments because they will be able to apply for a rate freeze as long as they do not increase the amount of encumbered state land or change the use of the coastal public land.

ENVIRONMENTAL REGULATORY ANALYSIS

The board has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to Chapter 155 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code §§33.101 - 33.136 relating to the board's ability to grant rights in coastal public land.

TAKINGS IMPACT ASSESSMENT

The board has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The board has determined that the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19 of the Texas Constitution. Furthermore, the board has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. The board has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests inasmuch as the property subject to the proposed amendments is owned by the state.

CONSISTENCY WITH CMP

The proposed rulemaking is subject to the CMP, 31 TAC §505.11(a)(1)(E) - (I) and §505.11(c), relating to the Actions and Rules Subject to the CMP. The board has reviewed these proposed actions for consistency with the CMP's goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The applicable goals and policies are found at 31 TAC §501.12 (relating to Goals) and §501.24 (relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands). Because all requests for the use of coastal public land must continue to meet the same criteria for board approval, the board has determined that the proposed actions are consistent with applicable CMP goals and policies. The proposed amendments will be distributed to Council members in order to provide them an opportunity to provide comment on the consistency of the proposed new rules during the comment period.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed under the Texas Natural Resources Code §§33.101 - 33.136, relating to the board's ability to grant rights in coastal public land, and Texas Natural Resources Code §33.064, providing that the board may adopt procedural and substantive rules which it considers necessary to administer, implement and enforce Chapter 33, Texas Natural Resources Code.

Texas Natural Resources Code §§33.101 - 33.136 are affected by the proposed amendments.

§155.1. General Provisions.

(a) Policy. The surface estate in the coastal public lands of this state constitutes an important and valuable asset dedicated to the permanent school fund and to all people of Texas. Such estate shall be managed as follows.

(1) - (8) (No change.)

(9) Rights to use the surface estate of coastal public lands shall not unduly prevent or interfere in any way with the board's management or administration of coastal public lands or the board's authority to grant other rights to coastal public land.

(10) The General Land Office (GLO), may at any time, inspect any structure located on coastal public land.

(11) If shoreline alteration is proposed, a coastal boundary survey, as defined in Texas Natural Resources Code §33.136, and field notes shall be required.

(12) The board may modify or waive the requirements of any rule or fee set forth herein if such action would be in the public's best interest as determined by the board.

(b) Scope of rules. These rules set forth the practice and procedure for administration by the board in granting a lease, easement, permit, and the registration of a structure on coastal public lands. All grants of interest are subject to these rules and regulations. The board may grant the following interest in coastal public lands for the indicated purposes:

(1) - (3) (No change.)

(4) channel easements to the holder of any surface or mineral interests in coastal public lands, for purposes necessary or appropriate to the use of such interests; and ~~interests.~~

(5) any other interest in coastal public land for any purpose that the board determines is in the best interest of the state.

(c) (No change.)

(d) Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Adjacent littoral property--The property that is contiguous to and borders the coastal public land upon which the property interest is sought.

(2) Alignment Bulkheads--Proposed bulkheads which align with an adjacent, preexisting bulkhead, or bulkheads.

(3) Appraised market value of adjacent littoral property--Fair market value of the unimproved adjacent littoral property as determined by the appropriate tax appraisal district.

(4) Basin--A structure used for a commercial or industrial activity that consists of the area of the land encumbered and any fixtures attached thereto. This definition includes the construction and maintenance of marinas, piers, walkways, docks, dolphins, and wharves and any and all dredged area associated therewith.

(5) Basin formula--The amount of encumbered state land multiplied by the appraised market value of the adjacent littoral property multiplied by the submerged land discount multiplied by the return on investment.

(6) ~~(4)~~ Board--The School Land Board of Texas.

(7) Boathouse--A garage-like enclosed structure built over water for the purpose of storing watercraft. Boathouses are suitable for long-term storage and may contain lifts, winches, or other ancillary docking mechanisms.

(8) Boatlift--A covered or uncovered boat slip with winch or pulley devices, used for lifting watercraft out of the water; suitable for long-term storage. The covering structure may not enclose the slip.

(9) Boat-skid--A ramp-like device, typically using 2 pieces of wood, used to place watercraft in or remove watercraft from the water.

(10) Boat slip--An encumbered area of water (covered or uncovered but not enclosed), formed by adjacent finger piers or pilings, into which a watercraft is moored or stored. Most suitable for short-term storage.

(11) [(2)] Breakwater--A structure of timber, cement, or other material, either fixed or floating, designed to protect beaches, bay shorelines, and harbor areas from wave action.

(12) [(3)] Bulkhead [and riprap]--Structures of timber, steel, concrete, rock, or similar substance erected parallel to the shoreline for erosion control purposes.

(13) [(4)] Coastal area--Refers to the geographic area comprising all the counties of Texas having any tidewater shoreline including that portion of the continental bed and waters of the Gulf of Mexico within the jurisdiction of the State of Texas.

(14) Coastal natural resource area--As defined by Texas Natural Resource Code §33.203(1).

(15) [(5)] Coastal public lands--All or any portion of the state-owned submerged lands, the waters overlying those lands, and all state-owned islands in coastal area.

(16) Commercial activity--Activity which is designed to enhance or accommodate a venture associated with a revenue generating activity. This definition excludes industrial activity, but includes residential uses if there is revenue generating activity conducted on the premises.

[(6) Commercial structure--Any structure located on coastal public lands which is used directly for the sale of goods, wares, services on or property of any kind and includes any structure on coastal public lands adjacent to littoral property used commercially when said structure is used in conjunction with adjacent littoral commercial property.]

[(7) Sensitive habitat--An area of submerged or emergent vegetation or reefs.]

(17) [(8)] Commissioner--The commissioner of the GLO. [General Land Office.]

(18) Dilapidated or derelict structure--Any structure which has deteriorated to an unsafe and/or unusable condition due to neglect, misuse, or which has been made inhabitable by vandalism or natural forces, or which or has been abandoned either through neglect or misuse.

(19) Dredged Area--An area that has been made deeper by the removal or relocation of sediments; dredged areas are considered to be structures on state-owned submerged land. When dredged areas are evaluated for permitting purposes, placement of dredged material must be addressed.

(20) [(9)] Dredged material--The sediments that have been removed from a dredged area; initial dredging of an area often produces usable material and maintenance dredging typically produces consolidated material that must dry before possible use. [disposal--The deposition of sand, gravel, shell, or other material generated by a dredging activity onto coastal public lands.]

(21) [(10)] Dredging--The moving of soil, sand, gravel, shell or other materials from its natural setting, including propwash-ing, [setting] and thereby artificially altering the water depth, e.g., channels, basins, etc.

(22) Encumbered state land--The amount of state coastal public land encumbered by the permitted activity and is expressed in number of square feet.

(23) Evaluation fee--A one-time fee assessed upon the granting of a commercial instrument. In the case of multiple-purpose easement applications, only one evaluation fee will be assessed.

(24) [(11)] Island--Any body of land surrounded by the waters of a salt water lake, bay, inlet, estuary, or inland body of water within the tidewater limits of this state and shall include man-made islands resulting from dredging of other operations. An island may be coastal public land.

(25) [(12)] Jetties and groins--Structures of rock, concrete, steel, or other material built perpendicular to the shoreline and are designed to modify or control sediment movement along a shore.

(26) [(13)] Fill--The placement of [deposition of soil, sand, gravel, shell, or any other] materials on coastal public lands for the purpose of changing the elevation of a water body or to create emergent land. [lands.]

(27) Fill area--A structure, excluding riprap, concrete stairs, breakwaters, jetties, and groins that permanently and fully encumbers, and entirely displaces, the water covering the coastal public land. The construction and maintenance of associated bulkheads is considered part of the fill area.

(28) Fill formula--Encumbered state land multiplied by the appraised market value of adjacent littoral property multiplied by the return on investment.

(29) Homeowners association--An association whose individual members, by virtue of holding full and exclusive title to the adjacent littoral property area specifically defined in an easement application, are entitled, as a group, to the privileges of an easement that may be granted by the State of Texas for use of coastal public land.

(30) Industrial activity--A use of coastal public land which involves one or more of the following:

(A) processing, manufacturing, or handling materials or products predominantly from extracted or raw materials,

(B) storage, manufacturing, or materials handling processes that involve flammable or explosive materials, or

(C) storing, manufacturing, or materials handling processes that involve hazardous or commonly recognized offensive conditions.

(31) [(14)] Littoral owner--The owner or leaseholder of any public or private upland bordered by or contiguous to coastal public lands.

(32) Maintenance dredging--Re-dredging an authorized channel to a previously authorized depth. The same limitations and conditions that applied to the initial dredging will apply to the maintenance dredging.

(33) [(15)] Marina--A combination of docks or piers floating or constructed on pilings, extending onto or over coastal public lands, which is used for purposes of storing or docking boats, watercraft [pleasure crafts], shrimp boats, and similar structures and is available to the public and charges are made for any of its services, and which do not constitute wharves, docks, or piers as hereinafter defined.

(34) Mineral interest holder--Holder of a state mineral lease who plans to dredge on coastal public land outside the state leasehold tract to obtain access to the state leasehold tract.

(35) ~~[(46)]~~ Mitigation sequence--The series of steps which must be taken to prevent or reduce impacts to ~~[if]~~ sensitive habitat while planning or evaluating a project. ~~[areas are adversely affected.]~~

(36) New dredged area--An excavated area which is not under current permit with the GLO. The new dredged area rate is charged for the first year, and the fee for maintaining the dredged area is charged for each subsequent year of the easement term.

(37) Oversized personal watercraft slip--A personal watercraft slip that exceeds 120 square feet in overall area.

(38) ~~[(47)]~~ Person--Any individual, firm, partnership, association, corporation (public or private, profit or nonprofit), trust, or political subdivision or agency of the state.

(39) Personal watercraft--A small boat or other craft for water transportation or recreation typically made for use/occupancy by no more than two people at one time.

(40) Personal watercraft slip--A small area designed for the docking and/or storage of personal watercraft; includes boat slips and boat skids; limited to a maximum of 120 square feet.

(41) ~~[(48)]~~ Pier and dock--Structures of timber or other material built onto or over coastal public lands which are used for fishing and recreational boating purposes. ~~[purposes and which do not constitute a wharf or marina as hereinbefore defined.]~~

(42) Private non-profit use--A private activity which does not contemplate the generation of any revenue.

(43) Public activity--Activity which is performed in the public interest, as defined by the board, and is not designed to enhance or accommodate a profit-making venture, nor is it primarily associated with a revenue generating activity.

(44) Public entity--City, county, state agency, board or commission, or any other political subdivision of the state.

(45) Residential use, Category I--One single-family residential structure per defined lot or parcel of land; both land and improvements are typically under the same ownership.

(46) Residential use, Category II--Multi-family residential units per defined lot or parcel of land; land and individual units may be separately owned; includes uses by condominium developments and homeowners associations acting for and on behalf of owners of a multi-family residential development, but does not include time-share developments or any use that includes commercial activities.

(47) Resource Impact Fee--A one-time fee assessed for proposed projects that impact seagrass, emergent marsh, or oyster reef, for which there is no separate mitigation requirement.

(48) Return on investment--A number used in the basin, fill, and industrial activity formulas that reflects a financial return expectation. The return on investment rate will be set annually by the board and will be effective at the beginning of each fiscal year.

(49) Riprap--hard substrate material placed seaward of the shoreline to reduce wave energy.

(50) ~~[(49)]~~ Seaward--The direction away from the shore and toward the body of water bounded by such shore.

(51) Sensitive habitat--An area of submerged or emergent vegetation or reefs.

(52) Sewage--Refuse liquids or waste (including human waste) matter typically carried off by sewers or stored in septic tanks.

(53) Shoreline stabilization project--Vegetative cover or rip-rap consisting of concrete block, concrete rubble, rock, brick, sack crete or similarly stable material approved by the GLO utilized to control shoreline erosion.

(54) ~~[(20)]~~ Structure--As defined in the Natural Resources Code, §33.004. ~~[Any structure, work, or improvement constructed upon, affixed to, or worked upon coastal public lands, including but not limited to, fixed to or floating piers, wharves, docks, jetties, groins, breakwaters, artificial reefs, fences, posts, retaining walls, levees, ramps, cabins, houses, shelters, landfills, excavations, land canals, channels, and roads.]~~

(55) ~~[(24)]~~ Submerged lands--As defined in Section 33.004, Texas Natural Resources Code. ~~[Any land extending from the boundary between the lands of the state and littoral owners seaward to the low water mark on any salt water lake, bay, inlet, estuary, or inland water within the tidewater limits, and any land lying beneath such a body of water, but (for the purposes of these rules only) excludes beaches bordering on, and the waters of, the open Gulf of Mexico, and the lands lying beneath such waters.]~~

(56) Submerged land discount--60% discount used in formulas when the easement is commercial, 70% discount used in formulas when the easement is industrial.

(57) ~~[(22)]~~ Waste and/or garbage--Includes discarded food, refuse, human waste, and unwanted man-made degradable and non-degradable items such as containers, equipment, and other rubbish.

(58) Watercraft--A boat or other craft for water transport or recreation. Included, but not limited to, motorboat, personal watercraft, and sailboat.

(59) Watercraft storage facility--A boathouse, boatlift, boat-skid, boat slip or personal watercraft slip.

(60) ~~[(23)]~~ Wharf--A structure of timber, cement, masonry, earth, or other material built onto or over coastal public lands, so that vessels can receive and discharge cargo, products, goods, any paying passengers, etc. This definition applies only to structures or portions thereof which are directly connected with and used for the loading and unloading of water borne commerce but specifically excludes such structures used only for commercial fishing purposes.

(e) (No change.)

(f) An applicant desiring a lease, easement, or permit in coastal public land must submit an application to the GLO on forms approved by the GLO not less than 90 days prior to the desired approval date. Applicants should present reasons why the lease, easement, or permit should be granted. The GLO may request any additional information it deems necessary.

§155.2. Leases.

(a) (No change.)

(b) Application. Pursuant to ~~[In addition to the requirements set forth in]~~ Section 33.102 of the Texas Natural Resources Code, any person desiring a lease for the use of coastal public land shall at least include the following in the application:

(1) the name, address, ~~[and]~~ telephone number, and email address if available, ~~[number]~~ of the person desiring the lease; and

(2) (No change.)

(c) General Conditions.

~~[(4)]~~ Lessee shall be subject to all the terms and conditions of their lease.]

(1) ~~[(2)]~~ Lessee shall be subject to all policies, provisions, terms and conditions applying to leased coastal public land by statute or administrative rule.

(2) ~~[(3)]~~ Lessee shall be subject to any additional policies, provisions, and conditions adopted by the board for the benefit of the public.

(3) ~~[(4)]~~ Lessee shall pay to the General Land Office the necessary filing fees and all other fees determined by the board as adequate compensation for the use of coastal public land.

(5) Lessee shall not unduly prevent or interfere in any way with the management, administration of, or granting of other rights by the board of any coastal public land included within its lease.]

(6) Lessee shall indemnify the lessor against any and all liability for damages to life, person, or property arising from the lessee's occupation and use of the coastal public land covered under its lease.]

(7) The Land Office, may at any time, inspect any structure located on leased coastal public land.]

(8) Lessee shall keep the Land Office informed at all times of the lessee's current telephone number and mailing address.]

(9) No lease may be assigned without prior written approval of the board.]

(d) Renewals. Renewals of leases will utilize the contract form and adhere to rules and regulations in effect at the time of the renewal.

(e) Termination. Upon termination of any lease, the lessee shall, at the option of the board remove all of lessee's personal property and all structures constructed or maintained by Lessee and restore the area involved as nearly as practicable to the same condition that existed prior to the placement of any structure thereon within 120 days of the termination date, except as otherwise approved by the commissioner in writing. This obligation of removal and restoration shall survive the expiration of the lease.]

(4) The board may consent to the premature termination of all or part of a lease under any of the following conditions:]

(A) the intended public purpose is terminated by any other governmental agency action that is not related to lessee's action or failure to act;]

(B) the lessee has satisfied all conditions of the lease prior to the to date of termination, unless otherwise waived by the board; or]

(C) an emergency due to a change in topography.]

(2) Failure to comply with any rules, regulations or the terms of the lease may result in the termination of the lease by the board.]

§155.3. Easements.

(a) - (c) (No change.)

(d) Application. An applicant desiring an easement must submit an application to the General Land Office on forms approved by the General Land Office, not less than 30 days prior to the desired approval date. If shoreline alteration is proposed, a survey plat and field notes may be required. In addition to submitting an application form, applicants are encouraged to present reasons why the easement should be granted. It is the responsibility of the applicant to demonstrate affirmatively that the proposed structure is in the public interest. The board may request any additional information it deems necessary.]

(d) ~~[(e)]~~ Consideration of application.

(1) Unless otherwise authorized by these sections, the board will hold a meeting to evaluate, consider, and hear testimony on an application. Upon receipt of an application and all requested information, the board may issue, deny, or issue with qualifications, an easement contract.

(2) Upon receipt of all necessary application information, the board or the commissioner, as provided by subsection (e) ~~[(f)]~~ of this section, may issue, deny, or issue with qualifications, an easement contract.

(e) ~~[(f)]~~ The commissioner may approve an easement application without board approval if the application is for any of the following activities but not for commercial/industrial activity and is consistent with the criteria for decision as set forth below in subsection (f) ~~[(g)]~~ of this section;

(1) existing fill and associated bulkhead, riprap, dredged areas, groins, breakwaters, or other similar existing projects;

(2) existing piers, docks, boatlifts, or other similar existing projects;

(3) proposed piers, docks, boatlifts, or other similar projects provided such projects have been determined by the General Land Office (GLO) staff to have minimal unavoidable environmental impacts;

(4) proposed fill and associated riprap or bulkheads provided such fill impacts less than two hundred (200) square feet;

(5) proposed riprap which impacts the minimum amount of coastal public land to prevent erosion;

(6) renewals or assignments of previously approved projects provided the project has not been altered; or

(7) habitat creation not associated with another project on coastal public land.

(f) ~~[(g)]~~ Criteria for decision. Project proposals will be evaluated in accordance with the following factors.

(1) Fill projects for the sole purpose of land reclamation will not be approved; and

(2) Any project that is determined by the board or the commissioner as unsafe or contrary to the established policies of the board and/or the GLO ~~[Land Office]~~ will not be approved.

(3) Adverse impacts to coastal natural resource areas must be avoided to the extent practicable and minimized where unavoidable. Applicants may be required to provide appropriate mitigation, as set forth in subsection (b) of this section, for those impacts which are unavoidable. Where impacts to coastal natural resource areas are minimal, the payment of a resource impact fee may be required in lieu of undertaking a physical mitigation project where such project is not practicable.

(4) Docks, piers, and watercraft storage facilities. ~~[Docks and piers.]~~

(A) Piers, docks, and watercraft storage facilities ~~[Piers and docks]~~ will be limited to the minimum size necessary to serve the purpose of the project and will be constructed in a manner that does not interfere with navigation or other authorized uses.

(B) Piers, docks, and watercraft storage facilities ~~[Piers and docks]~~ will be designed and constructed in a manner that avoids existing marshes, oyster reefs, seagrass vegetation or shallow water capable of supporting these habitats to the extent practicable. Impacts

to sensitive ~~habitat~~ [habitats] that cannot be avoided will be minimized to the extent practicable.

(C) When constructed for private/residential use, only one pier or dock, with normal appurtenances, two watercraft storage facilities (limited to one boathouse), and one additional personal watercraft slip may extend from each defined parcel of littoral property. Piers, docks, and watercraft storage facilities ~~[A pier or dock]~~ shall extend perpendicular from a point on the shoreline which is not less than ten feet from the adjacent littoral owner's property line, unless such a design would obstruct navigation or would unreasonably interfere with an adjoining littoral property owner's use of the waterfront.

(D) In addition to the authorization granted by subparagraph (C) of this paragraph, the board may, in its discretion, authorize the construction of additional watercraft storage facilities for use in connection with a private residence. Any such authorization must be consistent with subparagraphs (A) and (B) of this paragraph and will be subject to the fee structure outlined in §155.15 of this title (relating to Fees).

(5) Dredged areas.

(A) Propwashing is an unacceptable method of dredging and will not be approved.

(B) Projects shall be limited to the minimum size necessary to serve the project purpose. Joint use of access channels by multiple littoral property owners is preferred and encouraged rather than individual channels.

(C) Extension of piers into deeper water is preferred to the dredging of access channels or basins whenever practical.

(D) A channel or basin should be designed to insure adequate flushing and should prevent the creation of conditions which are likely to cause stagnant water pockets.

(E) The alignment of a channel or canal should make maximum use of a natural or existing channel. Design and alignment should minimize disruption of natural sheetflow, water flow, and drainage systems.

(F) A channel proposed to be dredged through highly productive coastal public lands is discouraged and will be approved only in unusual circumstances.

(G) Dredging should be conducted in a manner that minimizes turbidity and dispersal of dredged material.

(6) Dredged material disposal area.

(A) All dredged material should be placed on and contained within suitable upland sites of relatively low productivity above mean high water and where adverse effects of such disposal are minimized.

(B) Dredge material containing hazardous substances that presents a threat to public health, safety or the environment, shall be disposed of only in compliance with federal, state and local laws and regulations; further

(i) dredge material shall not be disposed of in any place where such disposal would adversely affect municipal water supplies, shellfish beds, fishery areas (including spawning and breeding areas), wildlife, or recreational areas; and

(ii) disposal of dredge material shall be in accordance with §501.14 of this title (relating to Texas Coastal Management Program Policies for Specific Activities and Coastal Natural Resource Areas).

(C) Open water disposal shall comply with subparagraph (B) of this paragraph and shall be considered only if upland alternatives are not available. Any disposal in open waters must be in compliance with all federal, state and local laws and regulations and shall be consistent with the goals and policies of the Texas Coastal Management Program.

(D) Consideration of habitat creation and improvement should be made when environmental damage results.

(7) Jetty, groin, and breakwater.

(A) No new groins will be authorized except under the most compelling circumstances upon request by a city, county, or other public entity for a public purpose.

(B) Plans for construction of a jetty, groin, or breakwater must be analyzed to insure that the structure does not create adverse sediment transportation patterns that induce erosion or undesirable shoaling in adjacent areas.

(C) Existing but unauthorized groins may be authorized to remain in place until such groins are destroyed or damaged in excess of fifty percent under the following conditions:

(i) no significant erosion of adjacent property has occurred or is occurring as a result of the presence of the groin;

(ii) no significant adverse impacts to sensitive habitats have occurred nor are sensitive habitats threatened by the presence of the groin;

(iii) no unnatural accumulation resulting in the deposition of sediments greater than five square feet per linear foot of the affected shoreline; and

(iv) non-compliance with any of the above conditions will be sufficient cause for denial or termination of authorization and for removal of a non-conforming structure.

(v) If a groin causes significant unnatural accumulation but the removal of the groin will cause severe adverse impacts to sensitive natural resources the boundary between state-owned submerged land and the adjacent littoral property must be established by a Licensed State Land Surveyor.

(D) In addition to minimizing adverse physical effects, the owner of a jetty, groin, or breakwater must ensure that the structure does not unduly interfere with public use of submerged land or the shoreline.

(8) Shoreline stabilization projects.

(A) Vegetative cover is the preferred method of shoreline stabilization and shall be used where its use is practical. Impacts to sensitive habitat will be avoided whenever possible and minimized and mitigated when unavoidable.

(B) Riprap is an acceptable method of shoreline stabilization if composed of interlocking brick, rock large enough not to be displaced by storms, or concrete rubble which is free of protruding rebar. Where possible, sloping riprapping should be used rather than a vertical seawall or bulkhead. Riprap material may extend seaward from the shoreline only as far as required to protect the shoreline.

(C) The use of tires, automobile bodies or parts, appliances, trash and other unconsolidated material is not acceptable and shall not be approved.

(D) Except in special circumstances, a bulkhead or seawall should be located no further seaward than the mean of the high water line, and, to the extent practicable, designed so that reflected wave

energy does not destroy stable marine bottom or constitute a safety hazard.

(E) An application for the construction of a bulkhead on a significant coastal public marsh or grassflat, where such will lead to the destruction of this resource, will normally be denied. To avoid this, extreme care should be taken as to the location and type of construction planned for bulkheads in a wetland area.

(9) Marinas.

(A) Marinas should be located in areas where the least dredging and maintenance will be required. Plans for a marina should minimize the disruption of currents and the need for excavation of the shore area. Dead end or deep canals without adequate flushing should be avoided.

(B) Each marina shall provide adequate facilities to its users for the reception of waste and/or garbage. Failure to insure that the users of a marina have access to facilities necessary for the proper and lawful disposal of waste and/or garbage on an ongoing basis may subject the easement to termination and the easement holder to any applicable civil and criminal penalties.

(10) Placement [~~Deposition~~] of fill.

(A) Placement [~~Deposition~~] of fill proposed in marshes and submerged grass bed areas normally will be denied. Consideration will be given to a fill proposal for a water dependent use or public use on relatively unproductive coastal public lands.

(B) A shoreline fill should be designed and located so that significant damage to existing ecological values or natural resources, or alternation of natural currents will not occur.

(C) The perimeter of fills should be provided with vegetation, retaining walls, riprap, or other mechanisms for erosion prevention.

(D) Fill material should be of such quality that it will not cause water quality degradation. Submerged land should not be considered for a sanitary landfill or the disposal of solid waste.

(g) [~~h~~] Mitigation sequence. An applicant is responsible for identifying practicable alternatives or available sites for a proposed project with the fewest adverse impacts. For projects requiring mitigation for unavoidable adverse impacts to natural resources, review shall be based on the following sequence:

(1) Avoidance. Projects must be designed to avoid critical area impacts to the extent practicable. Critical areas include, but are not limited to, a coastal wetland, an oyster reef, a hard substrate reef, submerged vegetation, or tidal sand or mud flat.

(2) Minimization. Unavoidable impacts shall be minimized to the extent practicable through the use of structural or non-structural modifications.

(3) Mitigation and Compensation. Each project approved without a separate mitigation requirement will be subject to a resource impact fee as set forth in §155.15(b)(6) of this title. [~~§155.15(b)(2)(F)~~]

(h) [~~i~~] Consideration of application by mineral interest holder. The board will review and consider an application for a channel easement to a mineral interest holder on coastal public lands to insure conformity with the policies, practices, and procedures in these rules and regulations. Environmental recommendations for certain development and production activities will be provided to the mineral interest holder on bay tracts and certain other tracts in the notice of bids booklet published by the GLO. [~~General Land Office~~]. Updates of these recommendations will be furnished on request. Development

activities conforming with these environmental recommendations normally will receive favorable consideration by the GLO. [~~General Land Office~~]

(i) [~~j~~] Approval criteria. An easement, if granted by the board, will be approved subject to these rules in addition to such terms and conditions as may be prescribed in the contractual agreement. The board may waive a rule at its discretion. All structures on coastal public lands will be subject to inspection at any time by the board or their authorized representatives. Any easement contract will be for a specific purpose. If a change in the contractual agreement is desired, an amendment application must be filed. An applicant, by accepting an easement to occupy or otherwise place a structure on coastal public lands or water surface areas, agrees and consents to comply with the conditions of the contract. [~~and be bound by the following additional terms and conditions:~~]

[(1) to keep the commissioner informed at all times of his or her address; and if a corporation, of the address of its principal place of business and the name and address of the officer or agent authorized to receive service of notice;]

[(2) that the allowance of the easement will be subject to the express condition that the rights granted will not unduly prevent or interfere in any way with the management, administration of, or the granting, either prior or subsequent to the easement, of other rights by the board of any part of the area included in the easement;]

[(3) that the structure authorized under contract will be maintained in proper order and will not be allowed to deteriorate to such a degree as to become a hazard or public nuisance;]

[(4) that all of the surface estate of coastal public lands shall be worked, dredged, filled, or used in such a manner as to prevent pollution, and in the event of pollution, the easement holder shall use all reasonable means to recapture all pollutants which have escaped, whether by reason of a sudden and accidental release or any other means. The easement holder shall be responsible for all damage to public and private property which is the result of pollution arising from any use of the easement including, but not limited to, the easement holder's failure to provide adequate facilities for the reception of waste and/or garbage;]

[(5) that the disposal or discharge of any waste or garbage into state waters from any marina, pier, dock, wharf, or any other structure located on coastal public lands is strictly prohibited;]

[(k) Renewals. A request for renewal of an easement shall utilize the contract form, rate schedule, and adhere to rules and regulations in effect at the time the renewal is made. Any person requesting a renewal must submit an application form as required in this rule and must include the easement number and date of expiration of the existing easement.]

[(l) Assignment. Assignment may be made of any interest rights granted in whole or in part subject to the written approval of the commissioner. Any such assignment must be filed in triplicate accompanied by a written request for approval in which the assignee agrees to comply with all rules and regulations contained herein and in the contractual agreement. A fee of \$50 payable to the General Land Office must accompany the application for approval of an assignment. No assignment is effective to transfer any rights until approved by the commissioner, the grantee, and the assignee.]

[(m) Termination. Failure to comply with these rules and regulations or the terms and conditions of the easement shall subject the easement to termination by the board.]

[(1) Upon termination of any easement, the grantee will, at the option of the board, within 120 days from said termination, remove

all of its personal property and all structures and manmade improvements authorized in the easement contract; provided all monies due have been paid. The grantee shall take whatever measures as are necessary to restore the area involved as nearly as practicable to the same condition that existed prior to placement of any structures thereon; except as otherwise approved in writing by the commissioner.]

[(2)] The board may consent to premature termination of all or part of any contractual agreement.]

§155.4. Permits.

(a) Issuance. The board may issue permits authorizing limited continued use of previously unauthorized structures, as defined in subsection (b) of this section, on coastal public lands, where such use is sought by one claiming an interest in any such structure but is not incident to the ownership of littoral property. This section is not intended to limit the authority granted to the commissioner or the board [School Land Board] in the management of the surface estate in coastal public lands, or to be the exclusive means by which the commissioner or board may grant permission for the use of coastal public lands.

(b) (No change.)

(c) Criteria. [Permits granted pursuant to this section shall be subject to the following policies, provisions, and conditions, in addition to those generally applicable to the Act:]

[(1)] The board may not:

[(A)] grant any permit authorizing the continued use of any structure located within 1,000 feet of privately owned littoral residential property, without the written consent of the littoral owner;]

[(1)] [(B)] grant any permit which would be in violation of the public policy of this state as expressed in these sections and regulations;

[(C)] grant any permit for any structure not in existence on August 27, 1973;]

[(2)] [(D)] grant more than one permit per person, immediate family, organization, company, or group; or

[(3)] [(E)] grant any permit for dilapidated or derelict structures. [A structure is considered "dilapidated" or "derelict" if it is decayed, deteriorated, structurally unsound, fallen into partial ruin, or has been abandoned either through neglect or misuse.] This provision shall not prohibit the issuance of a new contract for a previously abandoned structure, provided that the permit holder agrees to rebuild or relocate the structure within one year of contract issuance.

[(2)] A permit authorizing continued use of a previously unauthorized structure on coastal public lands shall be deemed automatically revoked and terminated if the coastal public land where the structure is located is subsequently leased for public purposes or exchanged for littoral property, or if such land is conveyed to a navigation district as provided by law.]

[(3)] Every permit shall provide that in the event the terms of the permit are broken, the permit may, at the option of the board, be terminated.]

[(4)] Permitted structures may be used only for noncommercial recreational purposes. Acceptance of payment for use of a permitted structure, or for services connected with use of the structure, is expressly prohibited.]

[(d)] Nuisance. All structures now existing or which shall be built, for which a permit is required pursuant to this section, have been declared by law to be the property of the state, and any construction,

maintenance, or use of such structure except as authorized in this section is declared a nuisance per se and is expressly prohibited.]

[(d)] [(e)] Interest claim. Any person seeking to obtain an interest in a structure shall apply to the board for a permit. The application shall be accompanied by the appropriate fees, as set forth in §155.15 of this title (relating to Fees), and any documentation requested by the board.

(e) [(f)] Board approval. The board may approve, deny, or approve with qualifications an application for a permit. If an application is approved by the board, the appropriate contract forms and related materials shall be forwarded to the applicant for completion. The board may include in its approval any provisions deemed necessary to protect the state's interest in coastal public lands and the public welfare.

[(g)] Term. The board shall set the term of the permit, which shall not exceed five years. No construction or other activities may commence at the site prior to execution of the structure permit by the commissioner of the General Land Office.]

(f) [(h)] Renewal. The board may, at its discretion, renew a permit upon receipt of a renewal request and the required fees from the current permit holder if all previous contractual conditions have been met. The commissioner may approve a permit renewal request without board approval if the request is consistent with the criteria as set forth in subsection (c) of this section, provided that the permit holder has not made or proposed modifications to the permitted structure(s) that constitute major repairs other than a modification that reduces the dimensions of the structure(s). If the commissioner approves a renewal request, the appropriate contract forms and related materials shall be forwarded to the permittee for completion. The commissioner may include in his approval any provisions deemed necessary to protect the state's interest in coastal public lands and the public welfare.

[(i)] Relocation. The board may require relocation of any structure permitted under this section if it is determined to be in the best interest of the state. The permit holder shall be provided written notice stating that relocation of the permit is required, and explaining the reasons for relocation. Failure to comply with terms of a relocation notice may be considered grounds for termination of a permit.]

[(j)] Transfer of interest. Board approval is required for the transfer of any interest in a permit from a current permit holder to another person. To transfer a permit, the current permit holder shall notify the board in writing of intent to terminate the existing contract, and shall provide the name of a person who seeks to assume responsibility for that site. The prospective permittee shall be forwarded the appropriate forms, and shall submit a completed permit application request and required fees to the board. To accomplish the transfer of interest, the board shall then terminate the original permit and, during the same meeting, issue a new permit for the same site to the person specified by the original permit holder, providing all original contract requirements have been complied with and all fees have been paid.]

(g) [(k)] Major repairs. Any action which alters the square footage of an existing permitted structure shall be considered a major repair and shall require prior approval from the board. The board may approve, deny, or approve with qualifications a request for major repairs to, or for the rebuilding of, a permitted structure. Examples of major repairs include, but are not limited to:

(1) modification or renovation work which alters the dimensions of structures currently in existence;

(2) the addition of any structure to an existing permitted facility;

(3) the relocation of any structure or facility from its permitted location; or

(4) any activity requiring dredging or filling.

(h) ~~[(4)]~~ Minor repairs. Minor repairs may be made to a permitted structure without prior approval of the board. Minor repairs shall include routine repairs to existing docks, piers, and the structure, and other normal maintenance required to maintain a structure in a safe and secure manner but which does not alter the authorized dimensions. Examples of minor repairs include, but are not limited to:

(1) replacement of tin or shingles on roofs, boards on floors, walls, walkways, or decks when the structural dimensions are not increased;

(2) replacement of pilings or other structural members that do not require dredging or filling;

(3) painting and maintenance activities; and

(4) addition of windows, doors, or rails to an existing structure.

(i) ~~[(m)]~~ Abandoned structures. Structures determined by the board to be abandoned may be removed from coastal public lands or permitted to an interested party through a competitive bid process approved by the board. Structures may be considered abandoned if:

(1) no response is received to a notice posted on the structure citing the Act which requires board authorization for the structure, and containing a request that the interest holder contact the General Land Office (GLO) within a specified period of time;

(2) the interest holder in an unpermitted structure fails to complete the permit application process within 60 days after contact with the GLO [General Land Office] has been made; or

(3) all reasonable attempts to contact a permit holder at the last known address have failed.

(n) ~~Termination. Failure to comply with these rules and regulations shall be justification for termination of the permit by the board. A permit holder shall have 60 days from the date of termination by the board to remove all personal property from the structure provided all required fees have been paid. The board shall have discretionary authority to revise this time limit, to require permittee to remove any or all structures and man-made improvements, or to assess the costs for repair of any damage to state lands and/or for any necessary removal of debris at the permit site. Any personal property remaining at the site after the 60 days, or the prescribed period set by the board, shall become property of the state and may be disposed of at the board's discretion. Structures for which the permit is terminated by the board for cause under this subsection may be removed from coastal public lands or permitted to an interested party through a competitive bid process approved by the board.]~~

(j) ~~[(o)]~~ Issuance of permits to new permit holders for structures determined to be abandoned or for which the permit was terminated by the board for cause. Structures determined by the board to be abandoned or for which the interest of the previous permit holder was terminated for cause may be permitted to an interested party through a competitive bid process approved by the board in accordance with this subsection.

(1) Nominations of structures for permitting. The board, GLO [General Land Office] staff, or persons seeking to obtain an interest in a specific structure may nominate for permitting a structure determined by the board to be abandoned or for which the interest of the previous permit holder was terminated for cause. Nominated structures will be evaluated by GLO [General Land Office] coastal leasing

staff as to suitability for permitting, including consideration of such factors as location, impacts to natural resources, and condition of the structure. GLO [The General Land Office] staff may recommend relocation or rebuilding of a structure nominated for permitting.

(2) Advertising of availability of nominated structures for permitting. The board will set the terms and conditions upon which nominated structures will be offered for permitting. These terms will be advertised and bids taken.

(3) Competitive bids for permitting of nominated structures. Competitive bids may be received by the board. Anyone who notified the GLO [General Land Office], in writing, of a desire to obtain an interest in a particular nominated structure before the terms are advertised, will be furnished a bid package at least 10 business days prior to the date set for awarding of the permit for a nominated structure. Bid proposals for permits for nominated structures must specify and describe the design of the structure proposed and must be submitted with the prospective bidder's payment of his bid offer for the bonus payment and filing fee.

(4) Permit fees for nominated structures. The appropriate filing fee, bonus payment, new contract issuance fee, and annual fee for nominated structures will be determined as provided by §155.15 of this title (relating to Fees).

(5) Awards. After evaluation of all proposals, including consideration of such factors as the prospective bidder's compliance with the board's structure design guidelines and compliance history relating to structures on coastal public land, the board may award a permit for a nominated structure to the bidder submitting the proposal determined by the board to be in the best interests of the state.

(6) Improvements. Any structure to be constructed in accordance with a permit issued pursuant to this bid process is the property of the State of Texas, as provided in the Texas Natural Resources Code, §33.131.

(k) ~~[(p)]~~ General provisions. Each permit issued by the board or commissioner shall be subject to the following general provisions.

(1) The permit number must be displayed on the structure in block numerals no less than 10 inches high. The numerals must be readily visible from the normal route of access and should be of a color that contrasts with the color of the structure. Decals, paint, or metal numerals may be used.

(2) All structures on coastal public lands shall be subject to inspection at any time by the board or its authorized representatives without prior notice to the permit holder.

(3) All structures shall be maintained in good repair and safe condition, and shall be kept in a clean and sanitary condition acceptable to the state.

(4) No domestic or wild animals of any type shall be permanently released upon state-owned islands. Domestic animals shall be prevented from disturbing nesting birds on state-owned islands.

(5) An applicant, by accepting a permit for a structure on coastal public land, agrees and consents to the following:

(A) to comply with all regulations which the board determines to be necessary and proper for the protection, conservation, and orderly development of coastal public lands;

(B) to indemnify the State of Texas against any and all liability for damage to life, person, or property arising from the permittee's occupation and use of the area covered by the interest granted; and

(C) to keep the commissioner of the GLO [~~General Land Office~~] informed at all times of his or her current mailing address and telephone number.

(6) The approval of a structure permit by the board or commissioner grants exclusive rights to the permit holder for the permitted structure only, and does not prevent the board or commissioner from issuing other grants of interest for the same area or implementing specific land management practices at their discretion.

§155.5. Registration of Structures.

(a) Pursuant to Texas Natural Resources Code §33.132, a littoral owner claiming any right in any structure, excluding a fixed or floating pier, which as of August 27, 1973, is situated in whole or in part on coastal public lands, shall have registered with the General Land Office (GLO) the structure on or before January 1, 1974. Any structure not registered by January 1, 1974, shall require an easement or lease.

(b) Pursuant to Texas Natural Resources Code §33.115, any littoral owner desiring to register a pier shall register such pier with the GLO [~~General Land Office~~] by submitting a non-refundable registration fee and an executed structure registration. The structure registration shall be on a form provided by the GLO [~~General Land Office~~] and shall contain the following.

(1) - (6) (No change.)

(c) Construction of a pier pursuant to Texas Natural Resources Code §33.115 may commence only upon receipt by the GLO [~~General Land Office~~] of the following:

(1) - (3) (No change.)

(d) Any person registering a structure or pier pursuant to this section agrees and consents to comply with and be bound by the following terms and conditions:

(1) to keep the GLO [~~General Land Office~~] informed at all times of his or her address;

(2) to maintain the structure or pier in proper condition and not allow it to deteriorate to such a degree as to become a hazard or public nuisance;

(3) to notify the GLO [~~General Land Office~~] upon a change of ownership, or property interest, in the adjacent littoral property within 30 days of such change; and

(4) to permit agents, representatives and employees of the GLO [~~General Land Office~~], at all times, to enter into and on a registered structure or pier and adjacent property of the littoral owner for the purpose of inspection of the structure or pier and for any other reasonable purpose necessary to protect coastal public land.

(e) The construction criteria for piers pursuant to Texas Natural Resources Code §33.115 shall include the following:

(1) (No change.)

(2) Appurtenances are limited to those established by the GLO [~~General Land Office~~] as normal appurtenances.

(3) (No change.)

(4) Walkways may not exceed 4 feet in width, however, variances may be granted by the GLO [~~General Land Office~~] upon demonstrated necessity.

(5) Boatlifts, boathouses, boat-skids, boat slips, and personal watercraft slips [~~Boatlifts~~] shall not be constructed in waters less than 3 feet Mean High Water.

(6) - (7) (No change.)

(8) Boatlifts, boathouses, boat-skids, boat slips, and personal watercraft slips [~~Boatlifts~~] and associated walkways may not exceed 16 feet in width.

(9) Personal watercraft slips or boat-skids [~~water-craft (PWC) lifts~~] (including ramps, platforms) may not exceed 120 square feet in overall area.

(10) Only 1 watercraft storage facility and 1 personal watercraft slip [~~boatlift plus 1 jet-ski lift~~] will be allowed per pier.

(f) - (h) (No change.)

§155.15. Fees.

(a) General.

(1) Form of payment. Fees may be paid by cash, check or other legal means acceptable to the commissioner.

(2) Time for payment. Payment is generally required in advance of issuance of permits, leases and other documents and/or delivery of services and/or materials by the General Land Office (GLO).

(3) Dishonor or nonpayment by other means. In the event a fee is not paid due to dishonor, nonpayment, or otherwise, the GLO [~~General Land Office~~] shall have no further obligation to issue permits, leases and other documents and/or provide services and/or materials to the permittee, lessee, or applicant.

(b) Board [~~School Land Board~~] fees and charges. The board [~~School Land Board~~] is authorized and required under the Natural Resources Code, Chapter 33, to collect the fees and charges set forth in this subsection where applicable.

[(1) ~~Definitions.~~ The following words and terms, when used in this subsection, shall have the following meanings, unless the context clearly indicates otherwise.]

[(A) ~~Adjacent littoral property~~—The property, specified in the easement application as owned by the easement applicant, that is contiguous to and borders the coastal public land upon which the easement is sought.]

[(B) ~~Alignment Bulkheads~~—Proposed bulkheads which align with an adjacent, preexisting bulkhead, or bulkheads.]

[(C) ~~Appraised market value of adjacent littoral property~~—Fair market value of the unimproved adjacent littoral property as determined by the appropriate tax appraisal district.]

[(D) ~~Basin~~—A structure used for commercial or industrial activity that consists of the area of the land encumbered and any fixtures attached thereto. This definition includes the construction and maintenance of marinas, piers, walkways, docks, dolphins, and wharves and any and all dredged area associated therewith.]

[(E) ~~Basin formula~~—The amount of encumbered state land multiplied by the appraised market value of the adjacent littoral property multiplied by the submerged land discount multiplied by the return on investment.]

[(F) ~~Bulkhead~~—A retaining wall or other structure built on or adjacent to littoral property.]

[(G) ~~Dredged Area~~—An excavated area, including channels and basins, on coastal public lands. This definition excludes any structure that would be included in the definition of fill area or basin.]

[(H) ~~Commercial activity~~—Activity which is designed to enhance or accommodate a venture associated with a revenue generating activity. This definition excludes industrial activity, but includes

residential uses if there is revenue generating activity conducted on the premises.]-

[(I) Encumbered state land—The amount of state coastal public land encumbered by the permitted activity and is expressed in number of square feet.]-

[(J) Encumbered open area—That portion of a project in which the design or use of the project impedes public access to coastal public lands and is not otherwise defined as a dredged area or other structure.]-

[(K) Evaluation fee—A one-time fee assessed upon the granting of a commercial instrument. In the case of multiple-purpose easement applications, only one evaluation fee will be assessed.]-

[(L) Fill area—A structure, excluding riprap, concrete stairs, breakwaters, jetties, and groins that permanently and fully encumbers, and entirely displaces the water covering the coastal public land. This activity includes the construction and maintenance of bulkheads.]-

[(M) Fill formula—State land encumbered multiplied by the appraised market value of adjacent littoral property multiplied by the return on investment.]-

[(N) Homeowners association—An association whose individual members, by virtue of holding full and exclusive title to the adjacent littoral property area specifically defined in an easement application, are entitled, as a group, to the privileges of an easement that may be granted by the State of Texas for use of adjacent coastal public land.]-

[(O) Industrial activity—A use of coastal public land not associated with private activity that facilitates and is ancillary to a manufacturing, processing, or gathering facility.]-

[(P) Mineral interest holder—Holder of a state mineral lease who plans to dredge on state-owned coastal lands outside the state leasehold tract to obtain access to the state leasehold tract.]-

[(Q) New dredged area—An excavated area which is not under current permit with the General Land Office. The new dredged area rate is charged for the first year, and the fee for maintaining the dredged area is charged for each subsequent year of the easement term.]-

[(R) Private non-profit use—A private activity which does not contemplate the generation of any revenue.]-

[(S) Public activity—Activity which is performed in the public interest by a public entity or a private non-profit organization, is not designed to enhance or accommodate a profit-making venture, and is not associated with a revenue generating activity.]-

[(T) Public entity—City, county, state agency, board or commission, or any other political subdivision of the state. See §155.21 of this title (relating to Application; Nature of Original Lease; Sublease; Termination).]-

[(U) Residential use, Category I—One single-family residential structure per defined lot or parcel of land; both land and improvements are typically under the same ownership.]-

[(V) Residential use, Category II—Multi-family residential units per defined lot or parcel of land; land and individual units may be separately owned; includes uses by condominium developments and qualified homeowners associations acting for and on behalf of owners of a multi-family residential development; but does not include time-share developments or any use that includes commercial activities.]-

[(W) Resource Impact Fee—A one-time fee assessed for proposed projects that impact seagrass, emergent marsh, or oyster reef, for which there is no separate mitigation requirement.]-

[(X) Return on investment—A number used in the basin, fill, and industrial activity formulas that reflects a financial return expectation. The return on investment rate will be set annually by the School Land Board and will be effective at the beginning of each fiscal year.]

[(Y) Shoreline stabilization project—Vegetative cover or rip-rap consisting of concrete block, concrete rubble, rock, brick, sack crete or similar material approved by the General Land Office utilized to control shoreline erosion.]-

[(Z) Structure—As defined in the Natural Resources Code, §33.004.]-

[(AA) Submerged land discount—60% discount used in formulas when the easement is commercial; 70% discount used in formulas when the easement is industrial.]-

[(2) The board [Coastal fees and charges. The School Land Board] will charge the following coastal lease and coastal easement fees for use of coastal public land, and will charge the following structure registration and permit fees. The board [School Land Board] charge will be based on either the fixed fee schedule or the alternate commercial, industrial, residential, and public formulas as delineated in paragraphs (3) and (4) [subparagraphs (C) and (D)] of this subsection [paragraph]. The greater of the fixed fee or formula rate will be charged.

(1) [(A)] Coastal lease charges. The board [School Land Board] may [only] grant coastal leases for public purposes as prescribed by the Natural Resources Code, Sections 33.103(1), 33.105, and 33.109. The filing fee and annual fee shall be negotiable. [to certain entities, as prescribed by the Natural Resources Code, §33.105 and §33.109.]-

[(i) Private activity, non-profit, scientific, or educational activity authorized by §155.2(a)(3) and (4) of this title (relating to Leases):-]

[(I) filing fee: \$25;]-

[(H) annual fee: negotiable/\$5.00 minimum.]-

[(ii) Public activity authorized by §155.2(a)(1) and (2) of this title (relating to Leases):-]

[(I) filing fee: \$25;]-

[(H) annual fee: no charge.]-

[(iii) Public activity authorized by §155.2(a)(1) and (b)(4) of this title (relating to Leases):-]

[(I) sub-lease processing fee: \$50;]-

[(H) annual fee: negotiated percentage of the activity's gross annual revenues.]-

(2) [(B)] Structure registration fee. Structure registration fee is required for private piers or docks that are 100 feet long or less and 25 feet wide or less and require no dredging or filling, as authorized by the Natural Resources Code, §33.115. Though board [School Land Board] approval is not required for construction, the applicant must register the location of the structure. The registration is valid for the life of the structure:

(A) [(i) filing fee: \$25;

(B) [(ii) annual fee: no charge;

(C) [(iii)] assignment fee: \$25;

(D) [(iv)] amendment fee: \$25.

(3) [(C)] Miscellaneous coastal easement fees:

(A) [(i)] assignment fee: \$50;

(B) [(ii)] amendment fee: \$50;

(C) [(iii)] late payment fee: 10% of past due amount/\$25 minimum.

(4) [(D)] Coastal easement[~~eastment~~] fees:

(A) [(i)] piers, docks, and watercraft storage facilities: [piers and docks:]

(i) [(H)] residential use, [use:] Category I:

(I) [(a)] filing fee: \$25;

(II) [(b)] annual fee: \$.03 per square foot/\$25 minimum;

(III) annual fee for more than one boatlift or boathouse and any oversized personal water craft slip: \$250 each;

(ii) [(H)] residential use, [use:] Category II:

(I) [(a)] filing fee: \$50;

(II) [(b)] annual fee: 75% of fee calculated for same use as a commercial activity/\$100 minimum;

(iii) [(H)] commercial:

(I) [(a)] filing fee: \$50;

(II) [(b)] evaluation fee: \$50;

(III) [(c)] annual fee: \$.20 per square foot/\$100 minimum;

(iv) [(V)] Other, private non-profit use:

(I) [(a)] filing fee: \$50;

(II) [(b)] annual fee: negotiable/\$100 minimum.

(B) [(ii)] marinas:

(i) [(H)] Clear Lake:

(I) [(a)] filing fee: \$50;

(II) [(b)] evaluation fee: \$50;

(III) [(c)] annual fee: \$4.00 per boat slip linear foot;

(ii) [(H)] residential use: Category II:

(I) [(a)] filing fee: \$50;

(II) [(b)] annual fee: 75% of fee calculated for same use as a commercial activity;

(iii) [(H)] other:

(I) [(a)] filing fee: \$50;

(II) [(b)] evaluation fee: \$50;

(III) [(c)] annual fee: \$3.00 per boat slip linear foot;

(C) [(iii)] wharf:

(i) [(H)] filing fee: \$50;

(ii) [(H)] evaluation fee: \$50;

(iii) [(H)] annual fee: \$.30 per square foot/\$100 minimum;

(D) [(iv)] breakwaters, jetties, and groins:

(i) [(H)] residential--Category I:

(I) [(a)] filing fee: \$25;

(II) [(b)] annual fee: \$.20 per square foot/\$25 minimum;

(ii) [(H)] residential--Category II:

(I) [(a)] filing fee: \$50;

(II) [(b)] annual fee: 75% of fee calculated for same use as a commercial activity/\$100 minimum;

(iii) [(H)] commercial activity:

(I) [(a)] filing fee: \$50;

(II) [(b)] evaluation fee: \$50;

(III) [(c)] annual fee: \$.20 per square foot/\$100 minimum;

(E) [(v)] dredged area:

(i) [(H)] mineral interest holder:

(I) [(a)] filing fee: \$50;

(II) [(b)] evaluation fee: \$50;

(III) [(c)] annual fee:

(a) [(1)] first year fee for a new dredged area: \$.02 per square foot/\$100 minimum;

(b) [(2)] fee for maintaining a dredged area after first year of easement: \$.005 per square foot/\$100 minimum;

(ii) [(H)] residential--Category I:

(I) [(a)] filing fee: \$50;

(II) [(b)] annual fee:

(a) [(1)] first year fee for a new dredged area: \$.03 per square foot/\$25 minimum;

(b) [(2)] fee for maintaining a dredged area after first year of easement: \$.005 per square foot/\$25 minimum;

(iii) [(H)] residential--Category II:

(I) [(a)] filing fee: \$50;

(II) [(b)] annual fee: 75% of fee calculated for same use as commercial activity/\$100 minimum;

(iv) [(V)] commercial activity:

(I) [(a)] filing fee: \$50;

(II) [(b)] evaluation fee: \$50;

(III) [(c)] annual fee:

(a) [(1)] first year fee for a new dredged area: \$.05 per square foot/\$100 minimum;

(b) [(2)] fee for maintaining a dredged area after first year of easement: \$.01 per square foot/\$100 minimum;

(F) [(vi)] Open encumbered area:

(i) [(H)] residential--Category I:

(I) [(a)] filing fee: none;

(II) [(b)] annual fee: none;

(ii) ~~[(H)]~~ residential--Category II:

(I) ~~[(a)]~~ filing fee: \$50;

(II) ~~[(b)]~~ annual fee: 75% of fee calculated for same use as commercial activity/\$100 minimum;

(iii) ~~[(H)]~~ commercial activity:

(I) ~~[(a)]~~ filing fee: \$50;

(II) ~~[(b)]~~ evaluation fee: \$50;

(III) ~~[(c)]~~ annual fee: \$.03 per square foot/\$100 minimum;

(iv) ~~[(IV)]~~ Other, private non-profit use:

(I) ~~[(a)]~~ filing fee: \$50;

(II) ~~[(b)]~~ evaluation fee: \$50;

(III) ~~[(c)]~~ annual fee: negotiable/\$100 minimum;

(G) ~~[(vii)]~~ basin: commercial and industrial activity:

(i) ~~[(H)]~~ industrial activity:

(I) ~~[(a)]~~ filing fee: \$50;

(II) ~~[(b)]~~ annual fee: basin formula, industrial activity;

(III) ~~[(c)]~~ evaluation fee: \$50;

(ii) ~~[(H)]~~ commercial activity:

(I) ~~[(a)]~~ filing fee: \$50;

(II) ~~[(b)]~~ annual fee: basin formula, commercial activity;

(III) ~~[(c)]~~ evaluation fee: \$50;

(H) ~~[(viii)]~~ fill area: all activity:

(i) ~~[(H)]~~ commercial/industrial:

(I) ~~[(a)]~~ filing fee: \$50;

(II) ~~[(b)]~~ annual fee: \$.20 per square foot, \$100 minimum, or fill formula;

(III) ~~[(c)]~~ evaluation fee: \$50;

(ii) ~~[(H)]~~ private activity/public activity:

(I) ~~[(a)]~~ filing fee: \$50;

(II) ~~[(b)]~~ annual fee:

(-a-) ~~[(1)]~~ existing fill (excluding bulkheads) not permitted as of August 15, 1995: \$.02 per square foot or \$25, whichever is greater;

(-b-) ~~[(2)]~~ annual fee for an alignment bulkhead to be constructed or constructed, but not permitted, as of August 15, 1995: \$.02 per square foot or \$25, whichever is greater;

(III) ~~[(c)]~~ annual fee for other: \$.10 per square foot or fill formula, whichever is greater/\$25 minimum;

(I) ~~[(ix)]~~ Shoreline stabilization project:

(i) ~~[(H)]~~ All activities authorized by §155.1(b)(2)(A) - (C) of this title (relating to General Provisions):

(I) ~~[(a)]~~ filing fee: \$15;

(II) ~~[(b)]~~ annual fee: none.

(ii) ~~[(H)]~~ Others:

(I) ~~[(a)]~~ filing fee: \$25;

(II) ~~[(b)]~~ annual fee: negotiable/\$.03 per square foot/\$25 minimum;

(J) ~~[(x)]~~ Boat ramps, concrete stairs, concrete slabs:

(i) ~~[(H)]~~ residential--Category I:

(I) ~~[(a)]~~ filing fee: \$25;

(II) ~~[(b)]~~ annual fee: \$.03 per square foot/\$25 minimum;

(ii) ~~[(H)]~~ residential--Category II:

(I) ~~[(a)]~~ filing fee: \$50;

(II) ~~[(b)]~~ annual fee: 75% of fee calculated for same use as a commercial activity/\$100 minimum;

(iii) ~~[(H)]~~ commercial activity:

(I) ~~[(a)]~~ filing fee: \$50;

(II) ~~[(b)]~~ evaluation fee: \$50;

(III) ~~[(c)]~~ annual fee: \$.20 per square foot/\$100 minimum;

(iv) ~~[(IV)]~~ Other, private non-profit use:

(I) ~~[(a)]~~ filing fee: \$50;

(II) ~~[(b)]~~ annual fee: \$100.

(5) ~~[(E)]~~ Structure (cabin) permits:

(A) ~~[(i)]~~ fees:

(i) ~~[(H)]~~ refundable deposit: \$200;

(ii) ~~[(H)]~~ annual fee for all structures excluding piers, docks, and walkways will be calculated at \$.60 per square foot per year/\$175 minimum;

(iii) ~~[(H)]~~ contract renewal: \$175;

(iv) ~~[(IV)]~~ new contract issuance or transfer of interest approved by the board: \$325;

(v) ~~[(V)]~~ bonus payment for new contract issuance for structure determined by the board to be abandoned or for which the permit was terminated by the board for cause: negotiable/minimum to be determined by the board;

(vi) ~~[(V)]~~ filing fee for competitive bid proposal for permit for structure determined by the board to be abandoned or for which the permit was terminated by the board for cause: \$50;

(vii) ~~[(VII)]~~ late payment fee: 25% of past due amount;

(B) ~~[(ii)]~~ permittee may apply for a continuation of the previous fee if the permit was issued prior to July 18, 1983 (the date of the initial rate increase), and if the annual fee will impose an undue financial hardship on a current permit holder.

(6) ~~[(F)]~~ Resource Impact Fee:

(A) ~~[(i)]~~ Public use piers and residential piers constructed within guidelines: exempt;

(B) ~~[(ii)]~~ All others: \$100 plus \$1.00 per square foot of impacted area.

(7) ~~[(G)]~~ Term. The term for all coastal leases and coastal easements is negotiable. Board ~~[School Land Board]~~ approval is required prior to construction.

(8) ~~[(H)]~~ Rental adjustments--all commercial and industrial easements. At every five-year interval in the term of commercial and industrial easements, the rental fee for the easement will be subject to adjustment. The adjustment, if any, will be in accordance with the then current Fee Schedule as adopted by the Board ~~[School Land Board]~~.

~~[(I)]~~ Discretionary authority. The School Land Board may reduce or waive any fee set forth herein if such action would be in the public's best interest as determined by the School Land Board.]

(9) ~~[(J)]~~ Implementation.

(A) ~~[(i)]~~ New residential developments. Upon the application for an easement associated with the development of a multi-unit or single-family residential project, the easement application will be processed and fee determined according to the appropriate commercial activity rate. Upon the sale of an individual residential unit associated with the easement, with sufficient infrastructure in place to convert use of the unit to individual use (and use of associated easement to private activity), the original easement applicant, upon agreement with the commissioner of the GLO ~~[General Land Office]~~, may pay a \$50 conversion fee. The easement fee may then be reduced by the percentage that the sold unit represented to the total number of units associated with the easement. At the time the conversion fee is paid under the provisions herein, the unit will then be considered to be subject to the residential activity rates upon renewal of the easement. For units already sold prior to the effective date of this section, conversion to a residential activity rate will be granted without the payment of the conversion fee.

(B) ~~[(ii)]~~ Additional terms. The commissioner of the GLO ~~[General Land Office]~~ may require, as a condition for the granting of an easement set forth in this section, such additional terms that he feels are necessary to secure performance under any such easement.

(10) Senior fee freeze. Upon application to the GLO and submission of proof of age by a grantee, fees for coastal easements associated with a single family residence will not be increased after the point in time when the littoral property owner (one person in the case of joint ownership) reaches the age of 65, unless the area of encumbered state land increases or there is a change in use of the coastal public land.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 30, 2008.

TRD-200802817

Trace Finley

Deputy Commissioner, Policy and Governmental Affairs, General Land Office

School Land Board

Earliest possible date of adoption: July 13, 2008

For further information, please call: (512) 475-1859



31 TAC §155.6, §155.8

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the School Land Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The School Land Board (board) proposes the repeal of §155.6 relating to Shoreline Alteration Projects and §155.8 relating to Federal, State, and Local Laws and Regulations.

The intent of this rulemaking is to avoid duplication by deleting provisions that incorporate specific language from applicable statutes or standard contract provisions. Section 155.6, relating to Shoreline Alteration Projects, includes provisions related to the requirements for a coastal boundary survey when conducting shoreline alteration projects. The proposed repeal deletes this section in its entirety because the requirement to provide a coastal boundary survey is found in Texas Natural Resources Code §33.136 and the proposed amendment to §155.1, relating to General Provisions.

Section 155.8, relating to Federal, State, and Local Laws and Regulations, addresses the requirement that all grantees comply with all applicable federal, state, and local laws and regulations related to their use of coastal public land. The proposed repeal deletes §155.8 in its entirety to avoid duplication because all contract documents require such compliance.

FISCAL AND EMPLOYMENT IMPACTS

Mr. Rene Truan, Deputy Commissioner for the General Land Office's (GLO) Professional Services Program Area, has determined that for each year of the first five years the repealed sections as proposed are in effect there will be no additional cost to state government as a result of enforcing or administering the repealed sections.

Mr. Truan has determined that for each year of the first five years the repealed sections as proposed are in effect there will be no fiscal implications for local governments as a result of enforcing or administering the repealed sections.

Mr. Truan has also determined that for each year of the first five years the repealed sections as proposed are in effect there will be no increase in economic costs to small business for compliance of the repealed sections.

The board has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Mr. Truan has determined that the public will benefit from the proposed repeal because the General Land Office (GLO) will be able to administer the coastal public land program more efficiently, providing the public more certainty and clarity in the process. The public will benefit from the reduction in the number and length of the Chapter 155 rules, and will be able to avoid duplicious requirements previously found in Chapter 33, Texas Natural Resources Code, 31 TAC Chapter 155, GLO policies, and contracts.

ENVIRONMENTAL REGULATORY ANALYSIS

The board has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed repeal to Chapter 155 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and

safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code §§33.101 - 33.136 relating to the board's ability to grant rights in coastal public land.

TAKINGS IMPACT ASSESSMENT

The board has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The board has determined that the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19 of the Texas Constitution. Furthermore, the board has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. The board has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests inasmuch as the property subject to the proposed amendments is owned by the state.

CONSISTENCY WITH CMP

The proposed rulemaking is subject to the CMP, 31 TAC §505.11(a)(1)(E) - (I) and §505.11(c), relating to the Actions and Rules Subject to the CMP. The board has reviewed these proposed actions for consistency with the CMP's goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The applicable goals and policies are found at 31 TAC §501.12, relating to Goals, and §501.24, relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands. Because all requests for the use of coastal public land must continue to meet the same criteria for board approval, the board has determined that the proposed actions are consistent with applicable CMP goals and policies. The proposed amendments will be distributed to Council members in order to provide them an opportunity to provide comment on the consistency of the proposed new rules during the comment period.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The repeals are proposed under the Texas Natural Resources Code §§33.101 - 33.136, relating to the board's ability to grant rights in coastal public land, and Texas Natural Resources Code §33.064, providing that the board may adopt procedural and substantive rules which it considers necessary to administer, implement and enforce Chapter 33, Texas Natural Resources Code.

Texas Natural Resources Code §§33.101 - 33.136 are affected by the proposed repeals.

§155.6 *Shoreline Alteration Projects.*

§155.8 *Federal, State, and Local Laws and Regulations.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 30, 2008.

TRD-200802818

Trace Finley

Deputy Commissioner, Policy and Governmental Affairs, General Land Office

School Land Board

Earliest possible date of adoption: July 13, 2008

For further information, please call: (512) 475-1859



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER E. CLAIMS PROCESSING-- PURCHASE VOUCHERS

34 TAC §5.51

The Comptroller of Public Accounts proposes an amendment to §5.51, concerning requirements for purchase documents. The proposed amendment changes the name of the purchase guide from "State of Texas Purchase Voucher Guide" to the "Purchase Policies and Procedures Guide." The amendment includes the definition of a mail code and changes the name of a payee identification number to its correct title, Texas identification number (TIN), as defined in the Government Code. Finally, the amendment clarifies the specific composition of a TIN.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by improving the purchase voucher payment process. The proposed amendment would have no significant fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Cheryl Scott, Fiscal Integrity Division, P.O. Box 13528 Austin, Texas 78711.

This amendment is authorized under Government Code, §2155.322 which provides the comptroller the authority to adopt the form or manner that state agencies must use to certify the receipt of goods and services along with the financial information and purchase information provided by the invoice and purchase voucher. It is also authorized under Government Code §2155.0012 which authorizes the comptroller to adopt rules to administer purchasing procedures under Chapter 2155.

The amendment implements Government Code, §403.039 and §403.071.

§5.51. *Requirements for Purchase Documents.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Appropriation year--The accounting period beginning on September 1st and ending the following August 31st.

(2) Chief administrative officer--The appointed or elected individual who is authorized by law to administer a state agency that is not headed by a governing body or the executive director or other individual with an equivalent title who administers a state agency headed by a governing body.

(3) Comptroller--The comptroller of public accounts for the State of Texas.

(4) Comptroller object code--The four-digit code that indicates in USAS the type of expenditure made.

(5) Delivery date--The date goods are delivered to a state agency.

(6) Governing body--The board, commission, committee, council, or other group of individuals that is collectively authorized by law to administer a state agency.

(7) Include--A term of enlargement and not of limitation or exclusive enumeration. The use of the term does not create a presumption that components not expressed are excluded.

(8) Institution of higher education--Has the meaning assigned by [the] Education Code, §61.003.

(9) May not--A prohibition. The term does not mean "might not" or its equivalents.

(10) Non-payment document--The paper or electronic document that a state agency submits to the comptroller for the purpose of requesting the comptroller to post or correct certain accounting information in USAS. The term does not include a payment document.

(11) Order date--The date that a state agency enters into a contract for goods or services.

(12) Texas [Payee] identification number--The 11-digit [14-digit] number that the comptroller assigns to each payee of a warrant issued or electronic funds transfer initiated [direct recipient of a payment made] by the comptroller [for the State of Texas].

(13) Mail code--The three digit number associated with a Texas identification number that documents disbursement instructions.

(14) [(13)] Payment document--The paper or electronic document that a state agency submits to the comptroller for the purpose of requesting the comptroller to make one or more payments on the agency's behalf. The term includes a document that uses the appropriated or other funds of a state agency to make a payment to another state agency. The term does not include a non-payment document.

(15) [(14)] Purchase document--The type of payment document that the comptroller requires a state agency to submit when requesting payment of certain claims against the agency.

(16) [(15)] Service date--The date the provision of services to a state agency ends.

(17) [(16)] State agency--A department, board, commission, committee, council, agency, office, or other entity in the executive, legislative, or judicial branch of Texas state government, the jurisdiction of which is not limited to a geographical portion of this state. The term includes an institution of higher education.

(18) [(17)] Payment transaction--A state agency's request to the comptroller for the comptroller to make one payment to one payee on behalf of the agency. A payment document always contains at least one payment transaction or one adjusting entry to a payment transaction.

(19) [(18)] USAS--The uniform statewide accounting system.

(b) Submission of purchase documents to the comptroller.

(1) A state agency may submit a purchase document to the comptroller only by submitting the document to USAS.

(2) A state agency must submit a purchase document to USAS electronically unless the comptroller has specifically authorized the agency to submit the document on paper. A state agency may electronically submit a purchase document through on-line, direct entries into USAS or through reporting into USAS by a magnetic media device.

(c) General responsibilities of state agencies and their officers and employees.

(1) The officers and employees of a state agency are responsible for:

(A) being knowledgeable about Texas laws and rules concerning expenditures;

(B) ensuring that the agency's expenditures comply with those laws and rules;

(C) determining the agency's legal authority for making each payment that would result from a purchase document before the document is submitted to the comptroller;

(D) ensuring that for each purchase document, the agency maintains necessary documentation for proving that each payment resulting from the document is legal, proper, and fiscally responsible; and

(E) ensuring that each purchase document complies with the processing requirements of USAS.

(2) An officer or employee of a state agency may not submit a purchase document to the comptroller if the officer or employee has any doubts about the legality, propriety, or fiscal responsibility of any payment that would result from the document.

(3) The chief administrative officer of a state agency is responsible for ensuring that the agency's officers and employees understand and comply with this subsection. However, the chief administrative officer's failure to fulfill this responsibility does not relieve those officers and employees from the obligation to comply.

(4) The comptroller's responsibility to audit a state agency's purchase documents does not relieve the agency's officers and employees from the responsibilities listed in paragraphs (1)-(3) of this subsection. Therefore, those officers and employees may not rely on the comptroller's audit to prevent a questionable payment from being made or to discover or reverse an invalid payment after it has occurred.

(d) Content of purchase documents and payment transactions. For each payment transaction included in a purchase document, the document must specify or contain:

(1) the Texas [payee] identification number and mail code of the individual or entity being paid or reimbursed;

(2) the amount of the payment or adjusting entry;

- (3) the proper comptroller object code;
- (4) the appropriation year to be charged for the payment or adjusting entry;
- (5) the agency number of the agency whose funds are being used to make the payment or adjusting entry;
- (6) the proper transaction code for crediting or debiting the appropriate general ledger accounts;
- (7) the proper program cost account;
- (8) the number of the fund from which the payment or adjusting entry will be made;
- (9) the number of the appropriation from which the payment or adjusting entry will be made;
- (10) the disbursement method for making the payment or adjusting entry;
- (11) the service or delivery date, which must be entered into the service date field;
- (12) the order date, which must be entered into the document date field;
- (13) the approval and certification of the document; and
- (14) any other information deemed necessary by the comptroller.

(e) Supporting documentation for purchase documents.

(1) The comptroller may require a state agency to make available to the comptroller documentation to support the legality and fiscal responsibility of each payment that results from a purchase document if the payment is made out of the agency's funds. Supporting documentation must be made available whenever:

(A) the comptroller's [~~State of Texas~~] Purchase Policies and Procedures [~~Voucher~~] Guide or a successor publication specifically requires the documentation to be made available; or

(B) the comptroller notifies the agency that the documentation must be made available.

(2) Supporting documentation must be made available to the comptroller in the manner required by the comptroller. The comptroller may require the documentation to be made available during a post-payment audit, a prepayment audit, or at any other time.

(3) The types of supporting documentation that the comptroller may require include purchase orders, requisitions, contracts, invoices, and receipts.

(4) A state agency must maintain documentation in its files to support the legality and fiscal responsibility of each payment resulting from a purchase document if the payment is made out of the agency's funds. The documentation must be maintained even if the comptroller does not require the agency to make it available to the comptroller.

(5) A state agency's supporting documentation must satisfy all the following requirements.

(A) The supporting documentation for a purchase document must be maintained in agency files at least until the end of the second appropriation year after the appropriation year in which the document is processed by USAS.

(B) This subparagraph applies to a purchase document only if the document contains only one payment transaction. Supporting documentation must be cross-referenced to the purchase document

that the documentation supports. This cross-reference must consist of the document's USAS document key. A purchase document's USAS document key consists of the document agency, the document number, and the appropriation year during which the document was initiated. All supporting documentation for a particular purchase document must be grouped together.

(C) This subparagraph applies to a purchase document only if the document contains more than one payment transaction. Supporting documentation must be cross-referenced to the purchase document and payment transaction that the documentation supports. The cross-reference to the purchase document must consist of the document's USAS document key. A purchase document's USAS document key consists of the document agency, the document number, and the appropriation year during which the document was initiated. The cross-reference to the purchase transaction consists of the transaction's suffix number. All supporting documentation for a particular payment transaction must be grouped together.

(D) The state agency whose funds are used to make a payment is responsible for maintaining the supporting documentation for the payment.

(6) When the comptroller requires a state agency to make supporting documentation available to the comptroller, the agency is solely responsible for complying with this requirement. The comptroller is not required to search the agency's files for the documentation, determine which documentation corresponds with which purchase documents or payment transactions, or otherwise organize or sort the documentation. If the agency does not make supporting documentation for a particular purchase document or payment transaction available to the comptroller according to the comptroller's requirements, then the comptroller may reject the document or transaction or deem the payment resulting from the document or transaction to be unsubstantiated or erroneous.

(7) This subsection also applies to any supporting documentation that a state agency maintains electronically.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 2, 2008.

TRD-200802846

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: July 13, 2008

For further information, please call: (512) 475-0387



34 TAC §5.54

The Comptroller of Public Accounts proposes an amendment to §5.54, concerning consulting services contracts. This section is being amended to implement House Bill 3560, 80th Legislature, 2007. This bill transferred the procurement functions of the Texas Building and Procurement Commission (TBPC) to the comptroller's office. The proposed amendment implements this change in law by changing references to the old commission from "Texas Building and Procurement Commission" (TBPC) to "Texas Procurement and Support Services" (TPASS), a division of the comptroller's office. Other changes to the section are for clarity.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by conforming agency rules to current state law. The proposed amendment would have no significant fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Macy Douglas, Statewide Fiscal Services Division, P.O. Box 13528 Austin, Texas 78711.

This amendment is authorized under Government Code, §2254.039, which provides the comptroller the authority to adopt rules for the administration of consulting services contracts.

The amendment implements Government Code, §2155.0011.

§5.54. Consulting Services Contracts.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. [In this section:]

(1) "Consultant" has the meaning assigned by Government Code, §2254.021(3).

(2) "Consulting service" means a study conducted for a state agency or advice provided to a state agency under a contract that does not involve the traditional relationship of employer and employee. The term does not include a routine service that is necessary to the functioning of a state agency's programs.

(3) "Executive director" means the individual who is the chief administrative officer of a state agency. The term excludes a member of a governing body.

(4) "Institution of higher education" has the meaning assigned by Education Code, §61.003 except the term does not include a public junior college or a community college.

(5) "Major consulting services contract" has the meaning assigned by Government Code, §2254.021(2).

(6) "State agency" has the meaning assigned by Government Code, §2151.002(2).

(7) "USAS" means the uniform statewide accounting system.

(b) Applicability of this section. This section applies to a consulting service only to the extent Government Code, Chapter 2254, Subchapter B, applies to that service.

(c) Effect of noncompliance with this section or applicable statutes.

(1) If a state agency contracts for a consulting service or renews, amends, or extends a consulting services contract without complying with the requirements of subsection (d) of this section and Government Code, §§2254.029, 2254.030, 2254.0301, and 2254.033, then the contract, renewal, amendment, or extension is void.

(2) If a contract, renewal, amendment, or extension is void under paragraph (1) of this subsection, then the comptroller may not:

(A) draw a warrant or transmit funds to satisfy an obligation under the contract, renewal, amendment, or extension; or

(B) reimburse a state agency for a payment made under the contract, renewal, amendment, or extension.

(3) If a contract, renewal, amendment, or extension is void under paragraph (1) of this subsection, then a state agency may not make any payments under the contract, renewal, amendment, or extension from any state or federal funds held in or outside the state treasury.

(d) Renewals, amendments, or extensions of consulting services contracts.

(1) A state agency must comply with this paragraph when the agency intends to renew, amend, or extend a major consulting services contract.

(A) If the renewal contract itself is not a major consulting services contract or if the contract after the amendment or extension is no longer a major consulting service contract, then the agency shall file the information required by Government Code, §2254.030 with the secretary of state for publication in the Texas Register. The information must be filed not later than the 20th day after either the date the renewal contract is entered into or the date the original contract is amended or extended.

(B) If the renewal contract itself is a major consulting services contract or if the contract after the amendment or extension is still a major consulting services contract, then the agency shall comply with the requirements of Government Code, §2254.028(a) and §2254.029.

(2) A state agency that intends to renew, amend, or extend a consulting services contract that is not a major consulting services contract shall comply with the requirements of Government Code, §2254.028(a) and §2254.029 if the original contract and either the renewal contract, the amendment, or the extension have a reasonably foreseeable value totaling more than \$15,000 if the agency is not an institution of higher education or \$25,000 if the agency is an institution of higher education.

(e) Procurement of consulting services by the Texas ~~[Building and]~~ Procurement and Support Services (TPASS) division of the comptroller's office ~~[Commission]~~. If TPASS ~~[the Texas Building and Procurement Commission]~~ procures a consulting service for a state agency under Government Code, §2254.040, then TPASS ~~[the commission]~~ must comply with any requirements of this section and Government Code, Chapter 2254, Subchapter B that would apply if the agency were procuring the consulting service directly.

(f) Purchase document requirements.

(1) In addition to the requirements of paragraph (2) of this subsection, the purchase document submitted to the comptroller that requests payment under a contract subject to that paragraph must be supported by the following documentation:

(A) a copy of the original contract and, if the contract has been renewed, amended, or extended, a copy of the renewal, amendment, or extension;

(B) a copy of any written notice provided to the Legislative Budget Board under Government Code, §2254.0301 if the amount of the contract, including any renewal, amendment, or extension, exceeds \$14,000; and

(C) a statement that the payment complies with Government Code, §§2155.004(a) - (b), 2254.026, 2254.027, and 2254.033.

(2) This paragraph applies when a purchase document is submitted to the comptroller that requests a payment under either a major consulting services contract (or a renewal, amendment, or extension of a major consulting services contract) or a contract that was

not originally a major consulting services contract but whose value after renewal, amendment, or extension totals more than \$15,000 if the payer is not an institution of higher education or \$25,000 if the payer is an institution of higher education. In addition to the requirements of paragraph (1) of this subsection, the document must be supported by the following documentation:

(A) a reference to the volume and page numbers of the *Texas Register* in which the requirements of Government Code, §2254.029 and §2254.030, and, if applicable, Government Code, §2254.028(c) and §2254.033(b) were fulfilled; and

(B) a copy of the governor's finding of fact that the consulting services are necessary if the finding is required by Government Code, §§2254.028, 2254.031(a)(2), or 2254.031(c)(2), or by any combination of those statutes.

(3) A state agency that has received the governor's emergency waiver of the requirements of Government Code, Chapter 2254, Subchapter B must include a copy of the waiver in the supporting documentation for the contract for which the waiver was received.

(4) A state agency shall retain the supporting documentation required by this paragraph and provide that documentation to the comptroller as required by §5.51 of this title (relating to Requirements for Purchase Documents).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 2, 2008.

TRD-200802847

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: July 13, 2008

For further information, please call: (512) 475-0387



34 TAC §5.57

The Comptroller of Public Accounts proposes an amendment to §5.57, concerning use of payment cards by state agencies. This section is being amended to implement House Bill 3560, 80th Legislature, 2007. This bill transferred the procurement functions of the Texas Building and Procurement Commission (TBPC) to the comptroller's office. The proposed amendment implements this change in law by changing references to the old commission from "Texas Building and Procurement Commission" (TBPC) to "Texas Procurement and Support Services" (TPASS), a division of the comptroller's office. Other changes to the section are for clarity.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by conforming agency rules to current state law. The proposed amendment would have no significant fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Macy Douglas, Statewide Fiscal Services Division, P.O. Box 13528 Austin, Texas 78711.

This amendment is authorized under Government Code, §403.023, which provides the comptroller the authority to adopt rules relating to the acceptance of credit, charge, and debit cards for the payment of fees, taxes, and other charges assessed by state agencies.

The amendment implements Government Code, §2155.0011.

§5.57. *Use of Payment Cards by State Agencies.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. [In this section:]

(1) "TPASS" [~~"Commission"~~] means the Texas [~~Building and] Procurement and Support Services division of the comptroller's office~~ [~~Commission~~].

(2) "Consulting service" has the meaning assigned by §5.54 of this title (relating to Consulting Services Contracts).

(3) "Executive director" means the individual who is the chief administrative officer of a state agency. The term excludes a member of a governing body.

(4) "Executive head" means:

(A) the elected or appointed state official who is authorized by law to administer a state agency that is not headed by a governing body; or

(B) the executive director of a state agency that is headed by a governing body.

(5) "Institution of higher education" has the meaning assigned by [the] Education Code, §61.003, other than a public junior college.

(6) "Payment card" means a credit or charge card issued to an officer or employee of a state agency for the purpose of allowing the officer or employee to purchase goods or services for the agency.

(7) "Payment card purchase" means the use of a payment card to pay for the purchase of a good or a service.

(8) "State agency" means:

(A) a board, commission, department, or other agency in the executive branch of state government that is created by the constitution or a statute of this state, including an institution of higher education;

(B) the legislature or a legislative agency; or

(C) the supreme court, the court of criminal appeals, a court of appeals, or a state judicial agency.

(b) Applicability of this section. Except as provided in subsection (c) of this section, this section applies to a state agency's use of a payment card regardless of the type of funds the agency uses to pay the payment card issuer.

(c) Exemptions.

(1) This section does not apply to a state agency if a law other than [the] Government Code, §403.023, specifically authorizes, requires, prohibits, or otherwise regulates the agency's use of a payment card.

(2) This section does not apply to the extent its application would affect a contract in which a state agency is a party. This paragraph applies only if the contract was in effect on September 1, 1993.

(3) This section does not apply to the extent its application would violate a constitutional prohibition against a law that impairs a contractual obligation.

(4) This section does not apply to the extent necessary to avoid an irreconcilable conflict with a federal law or regulation.

(5) This section does not apply to the use of a payment card to pay for a travel expense incurred by a state officer or employee while conducting official state business.

(d) Effect of noncompliance with this section. The comptroller may suspend or terminate a state agency's authority to use a payment card if the comptroller determines that the agency or an officer or employee of the agency has violated this section.

(e) Procurement of payment card services by TPASS [~~the commission~~] or an institution of higher education.

(1) TPASS [~~The commission~~] may contract with a payment card issuer on behalf of any state agency that chooses to participate in the contract.

(2) The comptroller may authorize an institution of higher education to contract with a payment card issuer on behalf of any state agency that chooses to participate in the contract. The institution may not enter into the contract without the comptroller's authorization.

(3) A state agency that is participating in a contract between TPASS [~~the commission~~] and a payment card issuer may start participating in a contract between an institution of higher education and a payment card issuer if:

(A) the comptroller approves of the agency's participation in the contract involving the institution; and

(B) the agency ceases participation in the contract involving TPASS [~~the commission~~].

(4) A state agency that is participating in a contract between an institution of higher education and a payment card issuer may start participating in a contract between TPASS [~~the commission~~] and a payment card issuer if:

(A) the comptroller approves of the agency's participation in the contract involving TPASS [~~the commission~~]; and

(B) the agency ceases participation in the contract involving the institution.

(5) A state agency may not use a payment card to pay for a purchase unless the card was issued under a contract between a payment card issuer and either TPASS [~~the commission~~] or an institution of higher education.

(6) A state agency may begin making payment card purchases only after the agency has complied with the procedural requirements of:

(A) TPASS [~~the commission~~], if the agency is participating in a contract between TPASS [~~the commission~~] and a payment card issuer; or

(B) an institution of higher education, if the agency is participating in a contract between the institution and a payment card issuer.

(f) Adoption of procedures by state agencies. A state agency shall adopt reasonable procedures governing the issuance and security

of payment cards and the use of those cards by the agency's officers and employees. Upon request, the agency shall make the procedures available to the comptroller for review.

(g) Prohibited uses of payment cards. A state agency may not use a payment card and may not reimburse an officer or employee for the use of a payment card for:

(1) a purchase of a personal nature or any other purchase not connected with official state business;

(2) a cash advance;

(3) a purchase of a consulting service;

(4) a purchase of a good or a service that may not be purchased without the prior approval of another state agency;

(5) a purchase that the comptroller audits before payment; or

(6) a purchase from a vendor if a payment to it is prohibited by:

(A) Government Code, §403.055 or §2107.008;

(B) Education Code, §57.48, or §57.482; or

(C) Family Code, §231.007.

(h) Applicability of purchasing requirements. The use of a payment card to pay for a purchase does not automatically exempt a state agency or its officers and employees from any purchasing requirement of state law or TPASS [~~the commission~~].

(i) Payments to payment card issuers. A state agency shall pay a payment card issuer through an electronic funds transfer.

(j) Refunds. A state agency may not accept a cash refund for a purchase if the agency paid for the purchase with a payment card.

(k) Lost or stolen payment cards. The state employee that had custody of a payment card immediately before it was lost or stolen shall report the loss or theft to the payment card issuer according to its requirements.

(l) Disputed charges. A state agency shall dispute any incorrect charge that appears on an invoice the agency receives from a payment card issuer. When disputing the charge, the agency shall comply with applicable law and the issuer's requirements.

(m) Taxes. A state agency or a state employee shall properly claim any available exemption from paying a state or federal tax that is assessed on a payment card purchase.

(n) Responsibilities and notification of state employees.

(1) A state employee shall ensure that each of the employee's payment card purchases comply with applicable state law and this section.

(2) The executive head of a state agency shall notify the agency's employees about the requirements of this section.

(o) Fiscal year determination. The fiscal year that must be charged for a purchase is not affected by the use of a payment card to pay for the purchase. For example, a state agency that pays a payment card issuer for a service purchased by the agency must charge the payment to the fiscal year in which the service was rendered.

(p) Prohibition against excess obligations. A state agency that uses a payment card to pay for a purchase should be careful not to violate any provision in the General Appropriations Act about the inurrence of excess obligations.

(q) Purchase document and receipt requirements.

(1) A purchase document that a state agency submits to the uniform statewide accounting system for a payment to a payment card issuer must comply with the comptroller's general requirements for the submission of those documents. In addition, the document must:

(A) provide the transaction charge and the appropriate Texas identification number on the detail lines;

(B) provide the Texas identification number and name of the payment card issuer on the remittance line; and

(C) contain any other information the comptroller considers necessary.

(2) A state agency shall keep in its files any receipt that a vendor issues to the agency for a payment card purchase. The receipt must contain a description of the good or service purchased that is sufficient to support the expenditure object code used by the agency. The agency shall make the receipt available to the comptroller upon request.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 2, 2008.

TRD-200802848

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: July 13, 2008

For further information, please call: (512) 475-0387



SUBCHAPTER F. CLAIMS PROCESSING-- GENERAL REQUIREMENTS

34 TAC §5.61

The Comptroller of Public Accounts proposes an amendment to §5.61, concerning approval and certification of certain payment and USPS documents. This section is being amended to add another payroll system, the standardized payroll/personnel reporting system (SPRS), in addition to USPS. The amendment includes the definition of a mail code and changes the name of a Payee identification number to its correct title, Texas identification number (TIN), as defined in the Government Code. Finally, the amendment clarifies the specific composition of a TIN. Other changes to the section are for clarity.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by improving the approvals and certifications of payroll processing procedures. The proposed amendment would have no significant fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Stacey Has-sin, Statewide Fiscal Services Division, P.O. Box 13528 Austin, Texas 78711.

This amendment is authorized under Government Code, §2103.032, which provides the comptroller with the authority to prescribe, adopt and enforce rules relating to the approval and certification of vouchers that are submitted to the comptroller electronically.

The amendment implements Government Code, Chapter 403, §403.039, and §403.015, Chapters 2101 and 2103.

§5.61. Approval and Certification of Certain Payment, SPRS, and USPS Documents.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Appropriation year--The accounting period beginning on September 1st and ending the following August 31st.

(2) Certification--A state agency's declaration to the comptroller that:

(A) the goods or services received by the agency comply with contract requirements; and

(B) the invoice received by the agency for the goods or services is correct.

(3) Chief deputy--For a state agency that is administered by an elected or appointed state official, the individual authorized by law to administer the agency during the official's absence or inability to act.

(4) Comptroller--The comptroller of public accounts for the State of Texas.

(5) Executive director--The individual who is the chief administrative officer of a state agency that is headed by a governing body. The term excludes a member of that body.

(6) Governing body--The board, commission, committee, council, or other group of individuals that is collectively authorized by law to administer a state agency.

(7) Head of agency--The elected or appointed state official who is authorized by law to administer a state agency.

(8) Include--A term of enlargement and not of limitation or exclusive enumeration. The use of the term does not create a presumption that components not expressed are excluded.

(9) Institution of higher education--Has the meaning assigned by [the] Education Code, §61.003.

(10) May not--A prohibition. The term does not mean "might not" or its equivalents.

(11) Non-payment document--The paper or electronic document that a state agency submits to the comptroller for the purpose of requesting the comptroller to post or correct certain accounting information in USAS. The term does not include a payment, SPRS, or USPS document.

(12) Texas [Payee] identification number--The 11 digit [44 digit] number that the comptroller assigns to each payee of a warrant issued or [an] electronic funds transfer initiated by the comptroller.

(13) Mail code--The three digit number associated with a Texas identification number that documents disbursement instructions.

(14) [(+3)] Payment document--The paper or electronic document that a state agency submits to the comptroller for the purpose of requesting the comptroller to make a payment on the agency's behalf. The term includes a document that uses the appropriated

or other funds of a state agency to make a payment to another state agency. The term does not include a USPS or SPRS document or a non-payment document.

(15) [(44)] Payroll document--The type of payment document that the comptroller requires a state agency to submit when requesting payment of the compensation of state officers and employees or certain other types of payments. The term does not include a USPS or SPRS document.

(16) [(45)] State agency--A department, board, commission, committee, council, agency, office, or other entity in the executive, legislative, or judicial branch of Texas state government, the jurisdiction of which is not limited to a geographical portion of this state. The term includes an institution of higher education.

(17) [(46)] USAS--The uniform statewide accounting system.

(18) [(47)] USPS--The uniform statewide payroll/personnel system.

(19) [(48)] USPS document--The document that a state agency electronically submits to USPS for the purpose of requesting the comptroller to pay the compensation of state officers and employees or to make certain other types of payments. The term does not include a payment, SPRS, or non-payment document.

(20) SPRS--The standardized payroll/personnel reporting system.

(21) SPRS document--The document that a state agency electronically submits to SPRS for the purpose of requesting the comptroller to pay the compensation of state officers and employees or to make certain other types of payments. The term does not include a payment, USPS, or non-payment document.

(b) Required approval and certification of payment and USPS or SPRS documents.

(1) General Requirements. The comptroller may not make a payment on behalf of a state agency unless:

(A) the agency properly submits a payment or USPS or SPRS document to the comptroller requesting the payment;

(B) the document has been approved according to this section; and

(C) the requirements, if applicable, of paragraph (2) of this subsection have been satisfied.

(2) Certification of payment and USPS or SPRS documents. To the extent a payment, SPRS, or USPS document requests payment of anything other than the compensation of a state officer or employee, a certification concerning the document must be given to the comptroller according to this section.

(3) Multiple approvals of payment and USPS or SPRS documents.

(A) If a payment document is approved more than once, the individual who provides the last approval is responsible for the truth and accuracy of the statement in subsection (o)(2)(B) of this section.

(B) If a USPS or SPRS document is approved more than once, the individual who provides the last approval is responsible for the truth and accuracy of the statement in subsection (o)(4)(B) of this section.

(c) Combined approval and certification of payment and USPS or SPRS documents.

(1) Automatic certification. When an individual approves a payment or USPS or SPRS document, the individual automatically provides its certification if the certification is required by subsection (b)(2) of this section. An individual may not approve a payment or USPS or SPRS document without also providing its required certification.

(2) Automatic approval. When an individual provides the required certification for a payment, SPRS, or USPS document, the individual automatically approves it. An individual may not provide the required certification for a payment, SPRS, or USPS document without also approving it.

(3) References. A specific reference in subsections (e) - (q) of this section to the approval of a payment, SPRS, or USPS document is also a reference to any required certification provided for that document.

(d) Fact findings concerning the electronic approval of payment and USPS or SPRS documents.

(1) Security. The comptroller has determined that the degree of security provided by the electronic approval of payment and USPS or SPRS documents under this section is at least equal to the degree of security that would be provided by the non-electronic approval of those documents.

(2) Operation and maintenance of USAS. The comptroller has determined that the electronic approval of payment and USPS or SPRS documents under this section would facilitate the operation and administration of USAS.

(e) Who may not approve payment and USPS or SPRS documents.

(1) State officers and employees.

(A) An officer or employee of a state agency may not approve and may not be designated to approve another agency's payment and USPS or SPRS documents.

(B) This subparagraph applies when a state agency submits a payment, SPRS, or USPS document that requests payment out of the funds of a second state agency. No officer or employee of the agency that submits the document may approve it.

(2) Individuals not employed by a state agency. An individual who is not employed by a state agency may not approve and may not be designated to approve a state agency's payment, SPRS, or USPS documents.

(f) Who may approve payment and USPS or SPRS documents.

(1) Generally. Only an individual who is described in paragraph (2) or (4) of this subsection may approve a payment, SPRS, or USPS document. When this section refers to an individual approving a payment, SPRS, or USPS document without further qualification or description, the reference is only to an individual who may approve a payment, SPRS, or USPS document under this paragraph.

(2) Individuals with inherent authority to approve payment and USPS or SPRS documents.

(A) The presiding officer of the governing body of a state agency may approve a payment, SPRS, or USPS document of the agency after:

(i) the comptroller has received a signature card that complies with subsection (l) of this section; and

(ii) the officer's security profile has been established according to:

(I) USAS security's procedures and requirements if the approval is of a payment document; or

(II) USPS or SPRS security's procedures and requirements if the approval is of a USPS document.

(B) This subparagraph applies only to a state agency that is headed by an elected or appointed state official. The agency's head of agency may approve a payment, SPRS, or USPS document of the agency after:

(i) the comptroller has received a signature card that complies with subsection (l) of this section; and

(ii) the head of agency's security profile has been established according to:

(I) USAS security's procedures and requirements if the approval is of a payment document; or

(II) USPS or SPRS security's procedures and requirements if the approval is of a USPS or SPRS document.

(C) Notwithstanding subparagraphs (A)(ii) and (B)(ii) of this paragraph, a presiding officer or a head of agency may provide non-electronic approval of a payment, SPRS, or USPS document without establishing a security profile. This subparagraph applies only if the comptroller does not require the approval to be provided electronically.

(3) USAS and USPS or SPRS security profile changes.

(A) This paragraph applies only when an individual ceases being either the presiding officer of a governing body or a head of agency.

(B) The individual's security profile in USAS, if any, must be changed so that USAS no longer recognizes the individual's user identification number as belonging to an individual who has authority to approve payment documents. The individual's security profile in USPS or SPRS, if any, must be changed so that USPS or SPRS no longer recognizes the individual's user identification number as belonging to an individual who has authority to approve USPS or SPRS documents. The changes must take effect not later than the date the individual ceases being the presiding officer or head of agency.

(C) The security coordinator of the state agency with which the individual serves as presiding officer or head of agency is responsible for requesting the comptroller to change the individual's security profiles.

(D) If the comptroller determines that a security coordinator has not complied with subparagraph (C) of this paragraph, then the comptroller may unilaterally change the security profiles.

(E) This subparagraph applies to a payment, SPRS, or USPS document only if the comptroller determines that an individual approved the document after the individual ceased being a presiding officer or a head of agency. The comptroller may take any necessary steps to prevent a warrant from being issued or an electronic funds transfer from being initiated until the document is properly approved. If the comptroller is unable to prevent a warrant from being issued or an electronic funds transfer from being initiated, then the comptroller may take any necessary steps to prevent the warrant from being honored or to reverse the electronic funds transfer. The state agency whose payment, SPRS, or USPS document results in the warrant or electronic funds transfer shall cooperate fully with the comptroller.

(4) Individuals without inherent authority but who may be designated to approve payment documents. An officer or employee of a state agency who does not have inherent authority to approve the

agency's payment and USPS or SPRS documents may be designated to approve those documents. A designation is valid only if it is made:

(A) by someone with the authority to make designations; and

(B) according to the procedures required by this section.

(g) Who may designate individuals to approve payment and USPS or SPRS documents.

(1) State agencies headed by a governing body.

(A) The governing body of a state agency may designate one or more individuals to approve its payment and USPS or SPRS documents.

(B) The governing body of a state agency may authorize the governing body's presiding officer or the agency's executive director, or both, to designate one or more individuals to approve the agency's payment and USPS or SPRS documents. The presiding officer or executive director may make a designation only if the authorization is effective according to subsection (h)(1) of this section.

(2) State agencies headed by an elected or appointed state official.

(A) The head of agency of a state agency may designate one or more individuals to approve the agency's payment and USPS or SPRS documents.

(B) The head of agency of a state agency may authorize the agency's chief deputy to designate one or more individuals to approve the agency's payment and USPS or SPRS documents. The chief deputy may make a designation only if the authorization is effective according to subsection (h)(2) of this section.

(h) How to authorize individuals to designate other individuals to approve payment and USPS or SPRS documents.

(1) State agencies headed by a governing body.

(A) The authorization of a presiding officer or executive director to designate individuals to approve payment and USPS or SPRS documents is effective only after the comptroller has received proper written notice of the authorization.

(B) Written notice to the comptroller is proper only if the notice satisfies the requirements of this subparagraph.

(i) The notice must be:

(I) a certified copy of the minutes of the meeting of the governing body during which it made the authorization; or

(II) a letter, memorandum, or other writing.

(ii) If the notice consists of a copy of the minutes, then the copy must be certified and signed by:

(I) the presiding officer of the governing body; or

(II) the member of the governing body who is responsible for keeping those minutes.

(iii) If the notice is in the form of a letter, memorandum, or other writing, then it must be signed by the presiding officer of the governing body.

(iv) The notice must state in substance that the governing body has authorized the presiding officer or executive director, as applicable, to designate individuals to approve the agency's payment and USPS or SPRS documents.

(v) The notice must state an effective date for the authorization.

(C) The authorization of a presiding officer or executive director to designate individuals to approve payment and USPS or SPRS documents may be of a named individual or, alternatively, anyone who holds the position of presiding officer or executive director.

(i) If the comptroller receives notification that a governing body has authorized the "presiding officer" or the "executive director," then the body is deemed to have authorized whoever holds the position of presiding officer or executive director.

(ii) If the comptroller receives notification that a governing body has authorized a named individual, then the body is deemed to have decided that its authorization terminates automatically upon the individual's leaving the position of presiding officer or executive director.

(D) The authorization of a presiding officer or executive director may not be limited to designating individuals to approve only payment documents or only USPS and SPRS documents. If the comptroller receives notification that a governing body has authorized the presiding officer or executive director to designate individuals to approve only one type of document, then the body is deemed to have authorized the designation of individuals to approve both types of documents.

(2) State agencies headed by an elected or appointed state official.

(A) The authorization of a chief deputy to designate individuals to approve payment and USPS or SPRS documents is effective only after the comptroller has received proper written notice of the authorization.

(B) Written notice to the comptroller is proper only if the notice:

(i) contains the head of agency's original signature;

(ii) states in substance that the head of agency has authorized the chief deputy to designate individuals to approve the agency's payment and USPS or SPRS documents; and

(iii) states an effective date for the authorization.

(C) The authorization of a chief deputy to designate individuals to approve payment and USPS or SPRS documents may be of a named individual or, alternatively, anyone who holds the position of chief deputy.

(i) If the comptroller receives notification that a head of agency has authorized the "chief deputy," then the head of agency is deemed to have authorized whoever holds the position of chief deputy.

(ii) If the comptroller receives notification that a head of agency has authorized a named individual, then the head of agency is deemed to have decided that the authorization terminates automatically upon the individual's leaving the position of chief deputy.

(D) The authorization of a chief deputy may not be limited to designating individuals to approve only payment documents or only USPS and SPRS documents. If the comptroller receives notification that a head of agency has authorized the chief deputy to designate individuals to approve only one type of document, then the head of agency is deemed to have authorized the designation of individuals to approve both types of documents.

(i) How to revoke authorizations of individuals to designate other individuals to approve payment and USPS or SPRS documents.

(1) State agencies headed by a governing body.

(A) The governing body of a state agency may revoke its authorization of a presiding officer or executive director to designate individuals to approve the agency's payment and USPS or SPRS documents.

(B) If a governing body revokes an authorization, then the body's presiding officer shall ensure that the comptroller receives written notice of the revocation not later than the tenth day after its effective date.

(C) If the comptroller determines that an individual made a designation after the effective date of the revocation of the individual's authority to make designations, then the comptroller may not recognize the designation.

(D) This subparagraph applies only if the governing body of a state agency has authorized a named individual to designate individuals to approve the agency's payment and USPS or SPRS documents.

(i) The comptroller shall stop recognizing the authorization of an individual who, at the time of the authorization, was the body's presiding officer if the comptroller determines that the individual no longer holds that position.

(ii) The comptroller shall stop recognizing the authorization of an individual who, at the time of the authorization, was the agency's executive director if the comptroller determines that the individual no longer holds that position.

(iii) A determination under clause (i) or (ii) of this subparagraph may be based on any information the comptroller deems credible.

(E) A change in the membership of a governing body does not automatically revoke an authorization made by that body. Whether an authorization would be revoked automatically by the abolishment of a governing body, the wholesale substitution of one governing body for another, or the transfer of a state agency from the jurisdiction of one governing body to another would depend on the legislation enacting the abolishment, substitution, or transfer.

(2) State agencies headed by an elected or appointed state official.

(A) The head of agency of a state agency may revoke the authorization of a chief deputy to designate individuals to approve the agency's payment and USPS or SPRS documents. The head of agency shall ensure that the comptroller receives written notice of the revocation not later than the tenth day after its effective date. If the comptroller determines that an individual made a designation after the effective date of the revocation of the individual's authority to make designations, then the comptroller may not recognize the designation.

(B) This subparagraph applies only if the head of agency of a state agency has authorized a named individual to designate individuals to approve the agency's payment and USPS or SPRS documents. The comptroller shall stop recognizing the authorization of an individual who, at the time of the authorization, was the chief deputy if the comptroller determines that the individual no longer holds that position. This determination may be based on any information the comptroller deems credible.

(C) When an individual stops being the head of agency of a state agency, all authorizations made by that individual are revoked automatically. Whether an authorization would be revoked automatically by the transfer of a state agency from the jurisdiction of one head

of agency to another would depend on the legislation enacting the abolishment, substitution, or transfer.

(j) How to designate individuals to approve payment and USPS or SPRS documents.

(1) State agencies headed by a governing body.

(A) An individual who has been designated to approve a state agency's payment and USPS or SPRS documents may approve one of those documents if:

(i) the comptroller has received proper written notice of the designation;

(ii) the comptroller has received a signature card that complies with subsection (l) of this section; and

(iii) the individual's security profile has been established according to:

(I) USAS security's procedures and requirements if the approval is of a payment document; or

(II) USPS or SPRS security's procedures and requirements if the approval is of a USPS or SPRS document.

(B) Written notice to the comptroller is proper only if the notice satisfies the requirements of this subparagraph.

(i) The notice must be:

(I) a certified copy of the minutes of the meeting of the governing body during which it made the designation; or

(II) a letter, memorandum, or other writing.

(ii) If the notice consists of a copy of the minutes, then the copy must be certified and signed by:

(I) the presiding officer of the governing body; or

(II) the member of the governing body who is responsible for keeping those minutes.

(iii) If the notice is in the form of a letter, memorandum, or other writing, then it must be signed by:

(I) the presiding officer of the governing body if it made the designation; or

(II) the individual who made the designation if the governing body did not.

(iv) The notice must:

(I) identify the governing body or individual who made the designation;

(II) list the legal name of the designated individual;

(III) state an effective date for the designation; and

(IV) say in substance that the individual has been designated to approve payment and USPS or SPRS documents.

(C) Notwithstanding subparagraph (A)(iii) of this paragraph, an individual may provide non-electronic approval of a payment, SPRS, or USPS document without establishing a security profile. This subparagraph applies only if the comptroller does not require the approval to be provided electronically.

(D) The designation of an individual to approve payment, SPRS, or USPS documents must be of a named individual. The

designation may not be of just anyone who holds a particular office or position. If the comptroller receives notification that a particular office or position has been designated, then the designation will be deemed to have been of the individual who holds the office or position as of the date the designation is made. The comptroller's failure to specifically refuse to recognize the designation of an office or position does not constitute the comptroller's acceptance of the designation of the office or position.

(E) The designation of an individual may not be limited to approving only payment documents or only USPS and SPRS documents. If the comptroller receives notification that an individual has been designated to approve only one type of document, then the designation will be deemed to include approval of both types of documents.

(2) State agencies headed by an elected or appointed state official.

(A) An individual who has been designated to approve a state agency's payment and USPS or SPRS documents may approve one of those documents if:

(i) the comptroller has received proper written notice of the designation;

(ii) the comptroller has received a signature card that complies with subsection (l) of this section; and

(iii) the individual's security profile has been established according to:

(I) USAS security's procedures and requirements if the approval is of a payment document; or

(II) USPS or SPRS security's procedures and requirements if the approval is of a USPS or SPRS document.

(B) Written notice to the comptroller is proper only if the notice:

(i) is signed by the individual who made the designation;

(ii) lists the legal name of the designated individual;

(iii) says who made the designation;

(iv) states an effective date for the designation; and

(v) says in substance that the individual has been designated to approve payment and USPS or SPRS documents.

(C) Notwithstanding subparagraph (A)(iii) of this paragraph, an individual may provide non-electronic approval of a payment, SPRS, or USPS document without establishing a security profile. This subparagraph applies only if the comptroller does not require the approval to be provided electronically.

(D) The designation of an individual to approve payment and USPS or SPRS documents must be of a named individual. The designation may not be of just anyone who holds a particular office or position. If the comptroller receives notification that a particular office or position has been designated, then the designation will be deemed to have been of the individual who holds the office or position as of the date the designation is made. The comptroller's failure to specifically refuse to recognize the designation of an office or position does not constitute the comptroller's acceptance of the designation of the office or position.

(E) The designation of an individual may not be limited to approving only payment documents or only USPS and SPRS documents. If the comptroller receives notification that an individual has

been designated to approve only one type of document, then the designation will be deemed to include approval of both types of documents.

(k) How to revoke designations of individuals to approve payment and USPS or SPRS documents.

(1) State agencies headed by a governing body.

(A) The governing body of a state agency may, at any time, revoke the designation of an individual to approve the agency's payment and USPS or SPRS documents, regardless of who made the designation.

(B) This subparagraph applies only if a state agency's presiding officer is authorized to designate individuals to approve the agency's payment and USPS or SPRS documents. The presiding officer may revoke the designation of an individual only if:

- (i) the presiding officer made the designation;
- (ii) an individual who previously held the position of presiding officer made the designation while holding that position;
- (iii) the agency's executive director made the designation; or
- (iv) an individual who previously held the position of executive director made the designation while holding that position.

(C) This subparagraph applies only if a state agency's executive director is authorized to designate individuals to approve the agency's payment and USPS or SPRS documents. The executive director may revoke the designation of an individual only if:

- (i) the executive director made the designation; or
- (ii) an individual who previously held the position of executive director made the designation while holding that position.

(D) If the designation of an individual to approve payment and USPS or SPRS documents is revoked, then the comptroller must receive written notification of the revocation not later than the tenth day after the revocation is made. The ten day period starts running when the revocation decision is made, not when the revocation takes effect. The notification must be provided by the presiding officer of a governing body if that body revoked the designation. Otherwise, the notification must be provided by the individual who revoked the designation.

(E) A change in the membership of a state agency's governing body does not automatically revoke the body's designation of any individual to approve payment and USPS or SPRS documents. Whether designations would be revoked automatically by the abolishment or creation of a governing body, the substitution of one governing body for another, or the transfer of a state agency from the jurisdiction of one governing body to another would depend on the legislation that enacts the change.

(F) A notification to the comptroller under subparagraph (D) of this paragraph must satisfy the requirements of this subparagraph.

(i) The notification must be:

- (I) a certified copy of the minutes of the meeting of the governing body during which it revoked the designation; or
- (II) a letter, memorandum, or other writing.
- (ii) If the notification consists of a copy of the minutes, then the copy must be certified and signed by:
 - (I) the presiding officer of the governing body;

or

(II) the member of the governing body who is responsible for keeping those minutes.

(iii) If the notification is in the form of a letter, memorandum, or other writing, then it must be signed by:

(I) the presiding officer of the governing body if it revoked the designation; or

(II) the individual who revoked the designation if the governing body did not.

(iv) The notification must:

(I) identify the governing body or individual who revoked the designation;

(II) list the legal name of the individual whose designation is revoked;

(III) state an effective date for the revocation; and

(IV) say in substance that the individual's designation to approve payment and USPS or SPRS documents is revoked.

(2) State agencies headed by an elected or appointed state official.

(A) The head of agency of a state agency may, at any time, revoke the designation of an individual to approve the agency's payment and USPS or SPRS documents, regardless of who made the designation.

(B) This subparagraph applies only if a state agency's chief deputy is authorized to designate individuals to approve the agency's payment and USPS or SPRS documents. The chief deputy may revoke the designation of an individual only if:

- (i) the chief deputy made the designation; or
- (ii) an individual who previously held the position of chief deputy made the designation while holding that position.

(C) If the designation of an individual to approve payment and USPS or SPRS documents is revoked, then the comptroller must receive written notification of the revocation not later than the tenth day after the revocation is made. The ten day period starts running when the revocation decision is made, not when the revocation takes effect. The notification must be provided by the individual who revoked the designation.

(D) A change in a state agency's head of agency does not automatically revoke the head of agency's designation of any individual to approve payment and USPS or SPRS documents. Whether designations would be revoked automatically by the transfer of a state agency from the jurisdiction of one head of agency to another would depend on the legislation that enacts the change.

(E) A notification to the comptroller under subparagraph (C) of this paragraph must:

- (i) be signed by the individual who revoked the designation;
- (ii) identify the individual who revoked the designation;
- (iii) list the legal name of the individual whose designation is revoked;
- (iv) state an effective date for the revocation; and
- (v) say in substance that the individual's designation to approve payment and USPS or SPRS documents is revoked.

(3) Mandatory revocations because of termination of employment.

(A) This paragraph applies to all state agencies.

(B) When an individual terminates employment with a state agency, the individual's designation to approve the agency's payment and USPS or SPRS documents ends on the effective date of the termination. Any officer or employee of the agency may notify the comptroller about the termination. Regardless of who provides the notification, the agency must ensure that the comptroller receives it not later than the fifth day after the effective date of the termination.

(C) The comptroller shall stop recognizing the designation of an individual to approve a state agency's payment and USPS or SPRS documents if the comptroller determines that the individual has terminated employment with the agency. This determination may be based on any information the comptroller deems credible.

(4) Revocations by the comptroller.

(A) This paragraph applies to all state agencies.

(B) The comptroller may unilaterally revoke the designation of any individual to approve payment and USPS or SPRS documents for any reason the comptroller deems appropriate.

(5) USAS security profile changes.

(A) If the designation of an individual to approve payment and USPS or SPRS documents is revoked, then the individual's security profiles in USAS and USPS or SPRS, if any, must be changed so that:

(i) USAS no longer recognizes the individual's user identification number as belonging to an individual who has authority to approve payment documents; and

(ii) USPS or SPRS no longer recognizes the individual's user identification number as belonging to an individual who has authority to approve USPS or SPRS documents.

(B) A security profile change required by subparagraph (A) of this paragraph must take effect not later than the date the revocation takes effect.

(C) The comptroller is responsible for changing the security profiles if the comptroller revoked the designation. Otherwise, the security coordinator of the state agency that revoked the designation is responsible.

(D) If the comptroller determines that a security coordinator has not complied with subparagraph (C) of this paragraph, then the comptroller may unilaterally change the security profiles of the individual whose designation has been revoked.

(6) Unauthorized approvals of payment and USPS or SPRS documents.

(A) This paragraph applies to a payment or USPS or SPRS document only if the comptroller determines that an individual approved the document after the taking effect of the revocation of the individual's designation to approve payment and USPS or SPRS documents.

(B) The comptroller may take any necessary steps to prevent a warrant from being issued or an electronic funds transfer from being initiated until a payment, SPRS, or USPS document subject to this paragraph is properly approved.

(C) If the comptroller is unable to prevent a warrant from being issued or an electronic funds transfer from being initiated, then the comptroller may take any necessary steps to prevent the war-

rant from being honored or to reverse the electronic funds transfer. The state agency whose payment, SPRS, or USPS document resulted in the warrant or electronic funds transfer shall cooperate fully with the comptroller in this regard.

(l) Signature card requirements.

(1) Presiding officers and heads of agency. A signature card submitted by a state agency concerning the approval of payment and USPS or SPRS documents by the presiding officer of a governing body or by a head of agency is valid only if the card:

(A) specifies the legal name, Texas [payee] identification number, mail code, and position of the presiding officer or head of agency;

(B) provides the presiding officer's or head of agency's user identification number, if the officer or head of agency has one;

(C) contains the presiding officer's or head of agency's original signature;

(D) specifies the agency's name and identification number;

(E) provides a contact phone number for the agency; and

(F) lists an effective date.

(2) Designated individuals. A signature card submitted by a state agency concerning the designation of an individual to approve payment and USPS or SPRS documents is valid only if the card:

(A) specifies the designated individual's legal name, Texas [payee] identification number, mail code, and position;

(B) provides the designated individual's user identification number, if the individual has one;

(C) contains the designated individual's original signature;

(D) specifies the agency's name and identification number;

(E) provides a contact phone number for the agency; and

(F) lists an effective date that is the same as the date listed in the accompanying written notification.

(m) Limitations adopted by state agencies concerning approval and designation authority.

(1) Limitations on approval authority. The comptroller may not enforce a state agency's decision to limit an individual's approval authority to particular types of payment, SPRS, or USPS documents if the limit is stricter than required by state law and this section. Enforcement of that decision is solely the agency's responsibility.

(2) Limitations on designation authority. The comptroller may not enforce a state agency's decision to limit a presiding officer's, executive director's, or chief deputy's authority to designate individuals to approve payment, SPRS, or USPS documents if the limit is stricter than required by state law and this section. Enforcement of that decision is solely the agency's responsibility.

(n) Signature card and notification forms adopted by the comptroller.

(1) Adoption of forms. The comptroller may adopt one or more forms to facilitate compliance with the signature card and written notice and notification requirements of this section.

(2) Use of forms. If the comptroller adopts a form under paragraph (1) of this subsection, then a state agency must use the form to comply with the requirements of this section to the extent the comptroller intends the form to be used for that purpose.

(o) How electronic approvals of payment and USPS or SPRS documents are provided.

(1) Release of payment documents into USAS for processing.

(A) A state agency may request USAS to process a batch of the agency's payment documents only by releasing the batch on-line according to this section and the procedures adopted by the comptroller.

(B) A batch that a state agency has released must be released again by the agency if:

(i) a transaction within the batch is altered after its original release; or

(ii) a transaction is added to the batch after its original release.

(C) An individual may approve a payment document only if:

(i) the individual begins an on-line session in USAS by entering the individual's user identification number and password; and

(ii) USAS determines that the user identification number and password belong to an individual who USAS recognizes as authorized to approve the agency's payment documents.

(D) USAS recognizes an individual as authorized to release a state agency's payment documents only if the comptroller has given the individual the necessary security to release those documents.

(E) A state agency that wants an individual to have release capabilities for the agency's payment documents must properly request necessary security for the individual from the comptroller. The comptroller will grant the request only if the comptroller determines that the individual:

(i) has inherent authority to approve payment documents and the requirements of subsection (f)(2) of this section have been satisfied; or

(ii) the individual has been designated to approve the agency's payment documents, the requirements of subsection (j) of this section have been satisfied, and the individual's designation has not been revoked according to subsection (k) of this section.

(2) Legal significance of releasing batches of payment documents into USAS for processing.

(A) The on-line release of a batch of payment documents into USAS for processing constitutes the electronic approval of all those documents.

(B) An individual who releases a batch of payment documents into USAS for processing is responsible for the truth and accuracy of the following statement with respect to each payment document and transaction in the batch: "I approve each purchase, travel, and payroll document in this batch. Employees at my state agency have determined that each document complies with applicable law, including the General Appropriations Act (GAA) and the rules of the comptroller of public accounts. For each purchase or travel document, employees at my state agency have determined that: [(+)] the goods and services covered by the document comply with the requirements of the con-

tracts under which they were purchased; and ~~that [(2)]~~ the invoices for the goods and services are correct. For each transaction included in a travel document, employees at my state agency have determined that the information included in the transaction has been approved by the claimant. For each payroll document, employees at my state agency have determined that: [(+)] the payroll is correct and unpaid; and ~~that [(2)]~~ any salary supplementation report required by the GAA to be filed with the comptroller of public accounts and the secretary of state has been filed. My state agency has authorized me to make this statement for the agency, and I accept responsibility for it." An individual who does not want to be responsible for this statement about a batch may not release the batch. An individual may not both release a batch and avoid responsibility for the statement.

(C) The chief fiscal officer of a state agency shall ensure that each individual who is authorized or designated to approve the agency's payment documents understands this paragraph. The agency's executive director or head of agency, as applicable, shall ensure that the chief fiscal officer satisfies this requirement. However, the failure of the chief fiscal officer, the executive director, or the head of agency to comply with a requirement of this subparagraph does not relieve any individual from responsibility for the truth and accuracy of the statement in subparagraph (B) of this paragraph.

(D) A state agency may not adopt a policy, procedure, or rule that conflicts with this paragraph.

(3) Release of USPS or SPRS documents into USPS or SPRS for processing.

(A) A state agency may request USPS or SPRS to process a batch of the agency's USPS or SPRS documents only by releasing the batch on-line according to this section and the procedures adopted by the comptroller.

(B) A batch that a state agency has released must be released again by the agency if:

(i) a transaction within the batch is altered after its original release; or

(ii) a transaction is added to the batch after its original release.

(C) An individual may approve a USPS or SPRS document only if:

(i) the individual begins an on-line session in USPS or SPRS by entering the individual's user identification number and password; and

(ii) USPS or SPRS determines that the user identification number and password belong to an individual who USPS or SPRS recognizes as authorized to approve the agency's USPS or SPRS documents.

(D) USPS or SPRS recognizes an individual as authorized to release a state agency's USPS or SPRS documents only if the comptroller has given the individual the necessary security to release those documents.

(E) A state agency that wants an individual to have release capabilities for the agency's USPS or SPRS documents must properly request necessary security for the individual from the comptroller. The comptroller will grant the request only if the comptroller determines that the individual:

(i) has inherent authority to approve USPS or SPRS documents and the requirements of subsection (f)(2) of this section have been satisfied; or

(ii) the individual has been designated to approve the agency's USPS or SPRS documents, the requirements of subsection (j) of this section have been satisfied, and the individual's designation has not been revoked according to subsection (k) of this section.

(4) Legal significance of releasing batches of USPS or SPRS documents into USPS or SPRS for processing.

(A) The on-line release of a batch of USPS or SPRS documents into USPS or SPRS for processing constitutes the electronic approval of all those documents.

(B) An individual who releases a batch of USPS or SPRS documents into USPS or SPRS for processing is responsible for the truth and accuracy of the following statement with respect to each document and transaction in the batch: "I approve each document in this batch. Employees at my state agency have determined that each document complies with applicable law, including the General Appropriations Act (GAA) and the rules of the comptroller of public accounts. For each document that involves the payment of compensation to a state officer or employee, employees at my state agency have determined that: [(+) the payroll is correct and unpaid; and that [(2)] any salary supplementation report required by the GAA to be filed with the comptroller of public accounts and the secretary of state has been filed. For each document that does not involve the payment of compensation to a state officer or employee, employees at my state agency have determined that: [(+) the goods and services covered by the document comply with the requirements under which they were purchased; and that [(2)] the invoices for the goods or services are correct. For each transaction that involves the reimbursement of a meal expense incurred during non-overnight travel, employees at my state agency have determined that the information included in the transaction has been approved by the claimant. My state agency has authorized me to make this statement for the agency, and I accept responsibility for it." An individual who does not want to be responsible for this statement about a batch may not release the batch. An individual may not both release a batch and avoid responsibility for the statement.

(C) The chief fiscal officer of a state agency shall ensure that each individual who is authorized or designated to approve the agency's USPS or SPRS documents understands this paragraph. The agency's executive director or head of agency, as applicable, shall ensure that the chief fiscal officer satisfies this requirement. However, the failure of the chief fiscal officer, the executive director, or the head of agency to comply with a requirement of this subparagraph does not relieve any individual from responsibility for the truth and accuracy of the statement in subparagraph (B) of this paragraph.

(D) A state agency may not adopt a policy, procedure, or rule that conflicts with this paragraph.

(5) Disclosure of user identification numbers and passwords. An individual may not disclose the individual's user identification number or password, or both, to any individual or entity. Therefore, an individual may not authorize another individual to release a batch of payment, SPRS, or USPS documents by using the first individual's user identification number and password. [The] Penal Code, §33.02(b) criminalizes the intentional or knowing disclosure of a password or personal identification number to an individual or entity without the effective consent of the computer owner.

(p) Non-electronic approvals of paper payment documents.

(1) Special definition. In this subsection, "payment document" means only a paper payment document.

(2) General requirements. A state agency may provide non-electronic approval of a payment document only if the comptroller consents to that approval method.

(3) Requirements of other subsections. In addition to this subsection, subsections (a) - (o) of this section govern all aspects of non-electronic approvals of payment documents, with the exceptions specified in those subsections.

(4) Method for providing approvals.

(A) The non-electronic approval of a payment document must be provided through the original signature of an individual who is authorized or designated to approve the document.

(B) An individual's original signature on a payment document is a valid approval of that document only if the signature matches the individual's signature on the appropriate signature card or, if adopted by the comptroller, on the form used in lieu of signature cards.

(5) Reapprovals. If a payment document is altered in any manner after an individual has properly approved the document, then the document must be properly approved again.

(q) Non-electronic approvals of payment documents submitted to USAS electronically and of USPS or SPRS documents.

(1) Special definition. In this subsection, "payment document" means only a payment document that is submitted to USAS electronically.

(2) General requirements. A state agency may provide non-electronic approval of a payment, SPRS, or USPS document only if the comptroller consents to that approval method.

(3) Requirements of other subsections. In addition to this subsection, subsections (a) - (o) of this section govern all aspects of non-electronic approvals of payment and USPS or SPRS documents, with the exceptions specified in those subsections.

(4) Method for providing approvals.

(A) The non-electronic approval of a payment, SPRS, or USPS document must be provided through the original signature of an individual who is authorized or designated to approve the document.

(B) An individual's original signature on a payment, SPRS, or USPS document is a valid approval of that document only if the signature matches the individual's signature on the appropriate signature card or, if adopted by the comptroller, on the form used in lieu of signature cards.

(5) Reapprovals. If a payment, SPRS, or USPS document is altered in any manner after an individual has properly approved the document, then the document must be properly approved again.

(6) When the release of a payment, SPRS, or USPS document does not constitute approval of that document.

(A) If the comptroller has consented to the contract, a state agency may contract with an individual not employed by the agency or with another entity to:

(i) release the agency's payment documents into USAS for processing;

(ii) release the agency's USPS or SPRS documents into USPS or SPRS for processing; or

(iii) release the agency's payment documents into USAS for processing and the agency's USPS or SPRS documents into USPS or SPRS for processing.

(B) The release of a payment, SPRS, or USPS document under subparagraph (A) of this paragraph does not constitute approval of the document. The document may be approved only according to paragraph (4) of this subsection.

(C) The comptroller may consent to a contract described by subparagraph (A) of this paragraph if:

(i) the comptroller is satisfied that the state agency whose payment, SPRS, or USPS documents are being released has statutory authority to enter into the contract;

(ii) the comptroller is satisfied that the state agency, if any, that will be releasing the payment, SPRS, or USPS documents has statutory authority to enter into the contract;

(iii) the contract is in writing;

(iv) the comptroller is satisfied that the agency whose payment, SPRS, or USPS documents are being released has established an internal system for properly authorized or designated individuals to approve those documents before their release according to paragraph (4) of this subsection;

(v) the comptroller is satisfied that approvals under the internal system described in clause (iv) of this subparagraph can be verified easily by the comptroller and the individual or entity that releases the payment, SPRS, or USPS documents;

(vi) before an individual or entity releases a payment, SPRS, or USPS document, the contract requires the individual or entity to verify that the approval methods described in paragraph (4) of this subsection have been followed;

(vii) the individual or entity has entered into a contract with the comptroller that obligates the individual or entity to comply with the requirements of this paragraph, if the comptroller determines the contract is necessary;

(viii) the agency whose payment, SPRS, or USPS documents are being released has agreed in its post-payment contract, if any, with the comptroller that the release of those documents into USAS, SPRS, or USPS, as applicable, does not constitute approval of the document; and

(ix) the comptroller is satisfied that the security provided under the contract is at least equivalent to the security that would exist if the agency released its own payment, SPRS, or USPS documents.

(D) The burden of demonstrating that a state agency has statutory authority to enter into a contract described in subparagraph (A) of this paragraph is with the agency. The comptroller may require the submission of whatever information and legal arguments the comptroller deems necessary to satisfy the comptroller that the authority exists.

(E) The comptroller must be kept informed about who is authorized to release the payment, SPRS, or USPS documents of a state agency that has entered into a contract described in subparagraph (A) of this paragraph. The authorized individuals may not appear on the agency's signature cards or, if adopted by the comptroller, the form used in lieu of the cards. The officer or employee of the agency who has the authority to enter into accounting services contracts is responsible for complying with this subparagraph.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 2, 2008.

TRD-200802849

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: July 13, 2008

For further information, please call: (512) 475-0387



CHAPTER 20. TEXAS PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER C. PROCUREMENT

34 TAC §20.48

The Comptroller of Public Accounts proposes amendments to §20.48, concerning auditing of purchase related documentation. The change is needed as a result of the recent legislative transfer of purchasing related functions from the Texas Building and Procurement Commission (TBPC) to the comptroller's office. Amending the rule would facilitate the former TBPC procurement audits to be conducted as a routine part of the Comptroller's Fiscal Management post-payment audit program. Procurement related data would be incorporated into the annual audit risk assessment which is the basis for each annual audit plan. In order to achieve efficiencies, it is imperative that requirements for audit scheduling and document sampling be consistent with the current post-payment audit program. This change minimizes disruption to state agencies and maximizes the use of state agencies' documentation while in comptroller possession.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by consolidating procurement auditing activities within the comptroller's office. The proposed amendment would have no significant fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Darrell Edge, Manager, Fund Accounting, P.O. Box 13528, Austin, Texas 78711.

The amendments are proposed under Government Code, §2155.324 and §2155.325, which provide the comptroller with the authority to determine the auditing methods used for purchase audits and to adopt rules regarding the types of purchases that will be audited.

The amendment implements Government Code, §2155.324 and §2155.325.

§20.48. Auditing of Purchase Related Documentation [Documents and Payment Vouchers].

(a) General. The comptroller [~~commission~~] audits payment vouchers and the associated purchasing documents which establish [~~established~~] the basis for the claim for payment from state appropriated funds in accordance with Government Code, Title 10, Subtitle D, §2155.324.

(b) Auditing procedure. The comptroller [~~commission~~] audits purchasing data for compliance with applicable statutes and rules of

the comptroller ~~[commission]~~. The ~~commission~~ may audit either 100% of State of Texas purchase vouchers and associated purchase documentation of any agency, a sampling of all documents, or may audit only specific types of purchases]. The ~~comptroller~~ ~~[commission]~~ may determine the extent and method of audits to be performed. ~~[Each agency will be audited at least once in each state fiscal biennium.]~~ Agencies will be required to furnish documentation ~~[copies]~~ of both delegated and non-delegated purchases ~~[purchase documents]~~ to the ~~comptroller~~ ~~[commission]~~ for these audits as needed. ~~Audit fieldwork~~ ~~[Audits]~~ may be performed at the agency site or remotely.

(c) ~~Auditing parameters.~~ For 100% audits or random sample audits of delegated and non-delegated purchases, the results must be at or above the 90% compliance level for each agency.]

(c) ~~[(d)]~~ Agency notification. The ~~comptroller~~ ~~[commission]~~ will communicate audit ~~[send]~~ results ~~[of these audits]~~ to the agency head, agency's directors of purchasing, and fiscal and/or business manager. If the results are determined by the ~~comptroller~~ to be unacceptable ~~[not within the established parameters, the agency will be offered support and assistance to maintain an acceptable level of compliance. Agencies will be given a period of six months to bring their purchasing compliance within the established parameters. If the results of a second (follow-up) audit still do not meet the parameters,]~~ then delegation of authority for some or all purchase categories may be suspended.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 2, 2008.

TRD-200802850

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: July 13, 2008

For further information, please call: (512) 475-0387



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.21

The Texas Board of Criminal Justice proposes amendments to §151.21, concerning Weapons Policy. The proposed amendments are necessary to add clarity.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that, for the first five year period, the anticipated public benefit, as a result of enforcing the rule, will be to increase public safety by strictly controlling the possession of firearms on the Texas Department of Criminal Justice property. There will not be an economic impact on persons required to comply with the rule. There will not be an adverse

economic impact on small or micro businesses, therefore, no regulatory flexibility analysis is required.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal in the *Texas Register*.

The amendments are proposed under Texas Penal Code, §§38.11, 46.03 and 46.035.

Cross Reference to Statutes: Texas Government Code, §492.013.

§151.21. Weapons Policy.

(a) Policy.

(1) The Texas Department of Criminal Justice (TDCJ or Agency) requires that all persons carrying a firearm shall unload and safely secure the firearm prior to entering a TDCJ correctional facility. For purposes of visiting a TDCJ correctional facility, a peace officer, a person licensed to carry a handgun under Subchapter H, Chapter 411, Texas Government Code, or a person who is otherwise authorized to carry a deadly weapon shall unload and secure the weapon(s) in the locked trunk of a vehicle, or a locked compartment of a vehicle if the vehicle does not have a trunk, immediately upon parking or while stopped at the first security checkpoint, whichever occurs first. A peace officer may also store a ~~[his]~~ weapon in any other TDCJ authorized location prior to entering the perimeter fence.

(2) It is a felony under the Texas Penal Code:

(A) ~~To~~ ~~[to]~~ possess a deadly weapon while in a correctional facility, unless the person possessing the deadly weapon is a peace officer or is an officer or employee of the correctional facility authorized to possess the deadly weapon while on duty or traveling to or from the person's place of assignment;

(B) ~~To~~ ~~[to]~~ provide a deadly weapon to an offender in ~~[inmate of]~~ a correctional facility;

(C) ~~To~~ ~~[to]~~ possess or go with a firearm, illegal knife, club~~[-]~~ or other prohibited weapon, within 1,000 feet of a premise ~~[premises the location of which is]~~ designated by the TDCJ as a place of execution under article ~~[Article]~~ 43.19, Texas Code of Criminal Procedure, on a day that a sentence of death is set to be imposed on the designated premises and the person received notice that:

(i) Going ~~[going]~~ within 1,000 feet of the premises with a weapon listed under this subsection was prohibited; ~~[or]~~

(ii) Possessing ~~[possessing]~~ a weapon listed under this subsection within 1,000 feet of the premises was prohibited; or

(D) ~~For~~ ~~[for]~~ a person licensed to carry a handgun under Subchapter H, Chapter 411 ~~[444]~~, Texas Government Code to carry a handgun on the premises of a correctional facility, regardless of whether the handgun is concealed.

(3) Except as provided in subsection (c) of this rule, ~~[section]~~ an employee of TDCJ is prohibited from carrying a firearm in a state-owned vehicle, ~~[or]~~ on their ~~[his]~~ person~~[-]~~ or in their ~~[his]~~ personal vehicle while on duty. An employee who is licensed to carry a handgun under Subchapter H, Chapter 411, Texas Government Code is subject to the statutes described in subsection (a)(2) of this rule ~~[section]~~ and:

(A) Is ~~[is]~~ prohibited from carrying a ~~[the]~~ handgun in a state-owned vehicle, ~~[or]~~ on ~~their~~ ~~[his]~~ person or in ~~their~~ ~~[his]~~ personal vehicle while on duty;

(B) ~~Shall~~ ~~[shall]~~ comply with paragraph (1) of this subsection when approaching a correctional facility; and

(C) ~~Shall~~ ~~[shall]~~ ensure ~~[that]~~ the handgun ~~[gun]~~ is secured in the locked trunk of a personal vehicle, or a locked compartment if the vehicle does not have a trunk, before exiting the vehicle to enter any TDCJ office space.

(b) Definitions. The following words and terms, when used in this rule, ~~[section]~~ shall have the following meanings, unless the context clearly indicates otherwise.

(1) Correctional Facility--A confinement facility operated by or under contract with the TDCJ, and a Community Corrections Facility (CCF) ~~[community corrections facility]~~ operated by a Community Supervision and Corrections Department (CSCD) ~~[community supervision and corrections department]~~. The premises of a correctional facility ~~is~~ ~~[means]~~ a building or portion of a building.

(2) Deadly Weapon ~~[weapon]~~--A firearm or anything manifestly designed, made~~[-]~~ or adapted for the purpose of inflicting death or serious bodily injury, or anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

(3) Exempt Employee ~~[employee]~~--An employee in the position of warden, assistant warden~~[-]~~ or an administrative position eligible for custodial officer certification and hazardous duty pay under §151.51(c)(1)(D) ~~[\$151.51(d)(1)(D)]~~ of this title (relating to Custodial Officer Certification and Hazardous Duty Pay Guidelines).

(4) Firearm--Any device designed, made~~[-]~~ or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use.

(5) Handgun--Any firearm that is designed, made~~[-]~~ or adapted to be fired with one (1) hand.

(c) Exceptions.

(1) A parole officer who possesses a weapon in accordance with Parole Division policy that authorizes certain parole officers to carry firearms under Texas Occupations Code §1701.257 may carry a firearm in a state-owned vehicle. An exempt employee may carry a firearm in a state-owned ~~[State-owned]~~ vehicle for purposes of responding to emergency situations involving offenders, ~~[inmates or offenders]~~, or on ~~their~~ ~~[his]~~ person in the event of an actual emergency situation, including those situations as defined in §152.61 of this title (relating to TDCJ Emergency Response to Municipal, County, State or Federal Law Enforcement Agencies and Non-Agent Private Prisons/Jails).

(2) State-owned housing, other than Bachelor Officers' Quarters, is excepted from this rule, only to the extent that weapons are secured in a locked container ~~[under lock and key]~~ within the house.

(3) An employee may carry a weapon(s) on duty if the employee is a peace officer in the Office of Inspector General (OIG) or possesses the weapon(s) in accordance with:

(A) The TDCJ ~~[the]~~ *Use of Force Plan*;

(B) Parole Division policy authorizing certain parole officers to carry firearms under Texas Occupations Code §1701.257 and parole and community supervision officers participating in the firearms training program pursuant to Texas Occupations Code §1701.257; or

(C) Other ~~[other]~~ applicable Agency ~~[agency]~~ policy.

(4) The written consent of the Executive Director ~~[executive director]~~ or ~~[his]~~ designee to an employee is effective to create an exemption ~~[exception]~~ from this rule.

(d) Duties of the Executive Director.

(1) The Executive Director ~~[executive director]~~ shall ensure that Agency ~~[agency]~~ policies are consistent with this rule. Policies adopted to ensure the safety and security of correctional facilities may be more restrictive than this rule and may encompass weapons not covered by this rule.

(2) The Executive Director ~~[executive director]~~ shall ensure that signs are posted in English and Spanish to provide adequate notice of the substance of this rule ~~[section]~~.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 27, 2008.

TRD-200802766

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: July 13, 2008

For further information, please call: (512) 463-0422



37 TAC §151.73

The Texas Board of Criminal Justice proposes amendments to §151.73, concerning Texas Board of Criminal Justice Vehicle Assignments. The proposed revisions are necessary to conform to state law and to prohibit the transportation of employee pets.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for the first five year period, the anticipated public benefit, as a result of enforcing the rule, will be to ensure that agency functions are performed. There will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses, therefore, no regulatory flexibility analysis is required.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal in the *Texas Register*.

The amendments are proposed under Texas Government Code, §§2113.013, 2101.0115 and 2171.1045.

Cross Reference to Statutes: Texas Government Code, §492.013 and §2203.001.

§151.73. Texas Department [Board] of Criminal Justice Vehicle Assignments.

(a) It is the policy of the Texas Board of Criminal Justice (TBCJ) that each Texas Department of Criminal Justice (TDCJ or Agency) ~~[agency]~~ vehicle, with the exception of any ~~[a]~~ vehicle assigned to a field employee, the Office of the Inspector General (OIG)

and as noted in subsection (c) of this rule, be assigned to the Agency motor pool and be available for check out.

(b) Agency vehicles shall only be used on official state business. Agency vehicles shall not be used to transport employee pets.

(c) ~~[(b)]~~ The Agency may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis, ~~[only]~~ if the Agency determines [agency makes a written documented finding that] the assignment of the vehicle is critical to the needs and mission of the Agency. Such vehicle assignments may include, but are not limited to, [agency; such as] vehicles used for law enforcement purposes and vehicles assigned to positions that [which] are required to respond to emergency situations.

(d) The Executive Director may authorize an employee to use an Agency vehicle to commute to and from work when it is determined the use of the vehicle may be necessary to ensure that vital Agency functions are performed. The name and job title of each employee authorized for such use and the reasons for the authorization shall be included in the Agency annual report filed pursuant to Texas Government Code §2101.0115.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 27, 2008.

TRD-200802767

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: July 13, 2008

For further information, please call: (512) 463-0422



CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION

SUBCHAPTER D. OTHER RULES

37 TAC §152.61

The Texas Board of Criminal Justice proposes amendments to §152.61, concerning TDCJ Emergency Response to Non-Agent Private Prisons/Jails. The proposed amendments are necessary to conform to state law.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that, for the first five year period, the anticipated public benefit, as a result of enforcing the rule, will be to increase public safety by authorizing TDCJ staff to render assistance in an emergency situation. There will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received

within 30 days of the publication of this proposal in the *Texas Register*.

The amendments are proposed under Texas Government Code §494.008.

Cross Reference to Statutes: Texas Government Code, §492.013.

§152.61. [TDCJ] Emergency Response to Municipal, County, State or Federal Law Enforcement Agencies and Non-Agent Private Prisons/Jails.

(a) Definitions. The following words and terms, when used in this rule ~~[section]~~, shall have the following meanings unless the context clearly indicates otherwise.

(1) Assistance--Texas Department of Criminal Justice (TDCJ) ~~[TDCJ]~~ resources provided to municipal, county, state or federal law enforcement agencies and non-agent private prisons or jails such as personnel, equipment, vehicles, horses, tracking pack or scent specific canines ~~[dogs,]~~ and chemical agents.

(2) Emergency Situation--An event determined by a law enforcement agency that presents [to present] an immediate or potential threat to public safety ~~[or to represent a potential threat to public safety]~~ if TDCJ's assistance is not received. The situation will generally involve multiple offenders, an escape~~[,]~~ or a hostage situation.

(3) Law Enforcement Agency--~~The [For purposes of this policy, a law enforcement agency is the]~~ Texas Department of Public Safety (DPS), including the Texas Rangers; a municipal police department; ~~[or]~~ a county sheriff's department; or a federal law enforcement agency.

(4) Non-Agent Private Prison/Jail--Any privately operated or owned prison or jail in Texas that [which] does not have a contract with the TDCJ to house TDCJ offenders.

(5) TDCJ Facility--Any ~~[Institutional Division (ID) prison, secure residential Parole Division (PD) facility, or State Jail Division (SJ)]~~ facility operated by or under contract with the TDCJ. ~~[Contractor-operated facilities are not included in this definition.]~~

(b) Policy. It is the policy of the TDCJ to assist law enforcement agencies requesting assistance in an emergency situation that presents an immediate or potential threat to public safety (e.g., apprehending an escapee of a municipal or county jail or a privately operated or federal correctional facility), if the TDCJ determines that providing assistance will not jeopardize the safety and security of the TDCJ and its personnel. [render assistance to non-agent private prisons/jails only when a law enforcement agency has made a prior determination that an emergency situation exists and has concurred in the request to the TDCJ.]

(c) Procedures.

(1) ~~[Approval of]~~ Request for Assistance.

(A) If a non-agent private prison/jail believes that an emergency situation has arisen, it must immediately notify the nearest law enforcement agency in order to qualify for the TDCJ's assistance. In the case of a non-agent private prison/jail that operates [operating] a facility holding county inmates, the facility [it] must first notify the county sheriff in order to qualify for ~~[the]~~ TDCJ's assistance.

(B) The law enforcement agency shall [will] then determine whether the situation is indeed an emergency situation as defined in subsection (a)(2) of this rule. If so, the law enforcement agency shall identify the [it will ask what] scope of assistance ~~[is]~~ being requested by consulting [and will consult] with the non-agent private prison/jail to determine [concerning]:

- (i) Number ~~[number]~~ and type of personnel needed;
- (ii) Number ~~[number]~~ and type of vehicles needed;
- (iii) Amount ~~[amount]~~ and type of riot equipment needed;
- (iv) Number ~~[number]~~ and type of weapons needed (to include chemical agents ~~[weapons]~~);
- (v) Number ~~[number]~~ of tracking pack or scent specific canines needed ~~[dog teams]~~; and
- (vi) Number ~~[number]~~ of horses needed.

(C) After ~~[With the concurrence of]~~ a Texas Ranger, [a] DPS sergeant or above, county sheriff~~[-]~~ or municipal police chief reviews the information gathered in subsection (c)(1)(B) of this rule and concurs with the scope of assistance required from the TDCJ, law enforcement agency staff may call the nearest TDCJ facility's Warden/Facility Administrator or Duty Warden/Facility Administrator to request assistance. ~~[TDCJ facilities may assist under these circumstances only when requested to do so by a law enforcement agency.]~~ The law enforcement agency shall ~~[must]~~ describe the assistance being requested and ~~[must]~~ agree to have a representative available to take an active role at the site of the emergency situation when the TDCJ team arrives.

(2) ~~[(D)]~~ Approval.

(A) ~~[(i)]~~ The TDCJ Warden/Facility Administrator or Duty Warden/Facility Administrator shall ~~[will]~~ contact the appropriate Correctional Institutions Division (CID) Regional Director ~~[(ID)]~~, Assistant Director (SJ), or Director of Specialized Supervision (PD)] for approval to render assistance. The Regional Director may agree to provide assistance if such shall not jeopardize the safety and security of the TDCJ and its personnel.

(B) ~~[(ii)]~~ Once the TDCJ's assistance is approved, the Warden/Facility Administrator or Duty Warden/Facility Administrator shall ~~[will]~~, in conjunction with the appropriate CID Regional Director ~~[(ID)]~~, Assistant Director (SJ), or Director of Specialized Supervision (PD)], determine what requested resources shall ~~[will]~~ be sent, based on the ~~[their]~~ assessment of the information received as well as concurrent Agency needs. The Warden/Facility Administrator or Duty Warden/Facility Administrator shall designate the senior members of the TDCJ emergency assistance team.

(3) ~~[(2)]~~ Emergency Assistance ~~[Situation Procedures]~~.

(A) The responding TDCJ facility shall ~~[will]~~ report the request for assistance and the facility's ~~[their]~~ response to the Emergency Action Center (EAC) in accordance with AD-02.15, "Operations of the Emergency Action Center and Reporting Procedures for Serious or Unusual Incidents." The Warden/Facility Administrator or Duty Warden/Facility Administrator shall be responsible for ~~[procedures for a Level I incident and will take]~~ all follow-up actions as required by the directive.

(B) Arrival at the Emergency Situation Site.

(i) Upon arrival at the scene of the emergency situation site, the senior member of the TDCJ team shall ~~[will]~~ be briefed by the representative of the law enforcement agency and/or non-agent private prison/jail required by subsection (c)(1)(C) of this rule. ~~[staff:]~~

~~[(ii)]~~ The law enforcement agency representative will be present at the briefing.

~~[(ii)]~~ ~~[(iii)]~~ The senior member of the TDCJ team shall ~~[will]~~ have sole discretion as to which TDCJ resources shall ~~[will]~~ be deployed.

(C) The senior member of the TDCJ team shall ~~[will]~~ be in charge of the TDCJ resources, to include personnel, at all times.

(D) If the emergency situation requires the use of tracking pack or scent specific canines, ~~[dogs:]~~ the requirements of AD-03.26, "Use and Training of Tracking Pack and Scent Specific Canines," shall ~~[will]~~ be followed.

~~[(d)]~~ ~~[(3)]~~ Reimbursement for Assistance. The non-agent private prison/jail shall ~~[will be required to]~~ reimburse the TDCJ for all assistance rendered, to include the cost of employees, equipment and supplies, as well as a minimum of \$1,000 for administrative overhead expenses. The Executive Director ~~[executive director]~~ of the TDCJ may waive this requirement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 27, 2008.

TRD-200802768

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: July 13, 2008

For further information, please call: (512) 463-0422



PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 341. TEXAS JUVENILE PROBATION COMMISSION STANDARDS SUBCHAPTER I. ELECTRONIC DATA INTERCHANGE SPECIFICATIONS

37 TAC §341.60

The Texas Juvenile Probation Commission (TJPC) proposes amendments to §341.60, concerning TJPC Monthly Folder Extract. The amendments are being proposed in an effort to reflect the increase in the number and types of programs operated by juvenile departments as well as a need to more precisely distinguish the characteristics of a juvenile, their disposition and the services they receive. The proposed changes do not require the addition of any new data fields to the EDI. Changes consist primarily of the expansion of available options in existing data fields. A total of eight data fields will be affected by the proposed changes.

Lisa Capers, Deputy Executive Director and General Counsel, has determined that for the first five year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcement or implementation.

Ms. Capers has also determined that for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcement or implementation will be to allow the public with more complete and detailed data which can be analyzed to better review juvenile justice trends, the provision of services and the needs of juveniles served by the system. There will be no economic effect on individuals or small businesses as a result of enforcement or implementation.

Public comments on the proposed amendments may be submitted to Kristy M. Almager at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

The amendments are proposed under Texas Human Resources Code §141.042, which provides the TJPC with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by these amendments.

§341.60. *TJPC Monthly Folder Extract.*

The TJPC Monthly Folder Extract data shall include all data fields required by TJPC Electronic Data Interchange Specifications found in the figure below.

Figure 1: 37 TAC §341.60 (No change.)

Figure 2: 37 TAC §341.60

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 27, 2008.

TRD-200802778

Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: July 13, 2008

For further information, please call: (512) 424-6710



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 15. TRANSPORTATION PLANNING AND PROGRAMMING

SUBCHAPTER B. RESEARCH AND PLANNING CONTRACTS

43 TAC §15.13

The Texas Department of Transportation (department) proposes amendments to §15.13, New Product Evaluation.

EXPLANATION OF PROPOSED AMENDMENTS

Section 15.13, New Product Evaluation, was adopted to provide procedures for the evaluation of new products and processes that may benefit the department. The section became effective on April 21, 1992. In the last 16 years, evaluation processes have changed but the rule has not. Some provisions of the section are unnecessarily specific and in need of revision. The proposed amendments to §15.13 adapt the section to current situations and technologies and provide the department with the flexibility needed to more quickly evaluate products that are beneficial to transportation.

In the existing section the word "vendor" was artificially defined to mean anyone or any entity who submitted an application. The amendments substitute the word "person" for "vendor" throughout the section because person is more appropriate in the context in which the term is used.

Amendments to §15.13(b), Definitions, add the definition of "executive director" and an expansive definition of "person." The amendments delete the definitions "new product," "product evaluation committee," "specification," "specification committee," and "vendor" because those terms are not used in the section as amended.

Amendments to §15.13(c), Application, specify that an application for product evaluation must be submitted to the executive director or the person who is designated by the executive director to receive the applications and, in recognition that the Internet is commonly used today for distributing information, amendments to paragraph §15.13(c)(4) change the source of application forms from central and district offices to the department's Internet site. Because the Internet web links change frequently, the section provides a method by which the application form is easily found.

The amendments delete §15.13(d), Evaluation procedures, and §15.13(e), Vendor notification, to provide flexibility for the evaluation of products. The information concerning the current application and evaluation processes and the specifics of notification will be provided on the department's web site where the application form is found.

Section 15.13(f), Restrictions, is re-lettered accordingly and amended to clarify that a determination that a product is acceptable to the department is not an endorsement of the product by the department or a finding of suitability of the product.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Rick Collins, Director, Research and Technology Implementation Office, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Collins has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be a more efficient and cost-effective method for evaluating new products. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §15.13 may be submitted to Rick Collins, Director, Research and Technology Implementation Office, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on July 14, 2008.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §§202.001, 203.002, and 224.032.

§15.13. *New Product Evaluation.*

(a) Purpose. The purpose of this section is to provide for the evaluation of new products and processes which may be of benefit to the Texas Department of Transportation in carrying out its statutorily authorized functions and responsibilities.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Department--The Texas Department of Transportation.

(2) Executive director--The executive director of the Texas Department of Transportation.

(3) Person--Includes an individual, corporation, association, and any other legal entity.

(2) New product--A product or process currently available on the market for immediate acquisition, for which the department does not have a current specification or which appears superior to existing products covered by a specification.

(3) Product Evaluation Committee (PEC)--The standing committee of the department responsible for coordinating product evaluation.

(4) Specification--An engineering description of acceptable materials and processes for department activities, adopted by the department's specification committee.

(5) Specification committee--A standing committee of the department appointed by the executive director to approve and adopt specifications for department materials and operations.

(6) Vendor--A person or organization outside the department which submits a product for evaluation.

(c) Application.

(1) To submit a product for evaluation, a person must [vendor shall] submit to the executive director or the executive director's designee an application in a form prescribed by the department.

(2) The department may request the person [vendor] to submit additional information, such as test reports, engineering reports, or other data citing the economic, environmental, or engineering advantages of the product.

(3) A person [vendor] who submits a patented product shall provide the department with a written certification that the person [vendor] is the holder of the patent, or has market rights to the product under license by the patent holder.

(4) Application forms may be obtained from the department's Internet site by searching on the phrase: product evaluation [Texas Department of Transportation, Research and Development Sec-

tion, P.O. Box 5051, Austin, Texas 78763, or from any district office of the department].

[(d) Evaluation procedures.]

[(1) After receipt of the application and any required additional information, the PEC will conduct a preliminary examination of a product to:]

[(A) determine whether the product is a new product; and]

[(B) coordinate with appropriate department organizational units to determine if an evaluation of the product is feasible.]

[(2) If, pursuant to paragraph (1) of this subsection, the PEC determines that the product is a new product that may be useful in the department's operations, and is one which the department may wish to procure, the department may, if determined to be appropriate, test the product under laboratory conditions or trial usage.]

[(e) Vendor notification. The department will advise the vendor, in writing, of the results of the evaluation.]

[(d) [(f)] Restrictions.

(1) Any department determination of product acceptability does not:

(A) obligate the department to procure the product or require any of its contractors to procure the product for use on department projects; or

(B) constitute endorsement or finding of suitability of use other than for the department.

(2) A person may [vendor shall] not represent a determination of product acceptability as an endorsement or [a] finding of suitability of the product.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 30, 2008.

TRD-200802811

Bob Jackson

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: July 13, 2008

For further information, please call: (512) 463-8683

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER A. VOTER REGISTRATION

1 TAC §§81.15 - 81.17, 81.19, 81.23

The Office of the Secretary of State adopts amendments to §§81.15 - 81.17, 81.19, and 81.23 concerning disbursement of funds under the Texas Election Code, Chapter 19. The amendments are adopted without change to the text as proposed in the April 25, 2008, issue of the *Texas Register* (33 TexReg 3361).

These amendments will allow for detail clarification of specific rulings of the Chapter 19 fund for both the county Voter Registrar and the Office of the Secretary of State. These rules designate which goods and services are reimbursable with Chapter 19 funds and outline procedures to be followed by county voter registrars to obtain such reimbursement.

No public comments were received concerning the amendments. The amendments are adopted under the Texas Election Code, §31.003 and §19.002(b), which provides the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws, and in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws, and to adopt rules consistent with the Election Code.

The Texas Election Code, Chapter 19, §19.002(b) is affected by these amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 2, 2008.

TRD-200802845

Ann McGeehan

Director of Elections

Office of the Secretary of State

Effective date: June 22, 2008

Proposal publication date: April 25, 2008

For further information, please call: (512) 463-5650



PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 171. REPORTING REQUIREMENTS

The Texas Judicial Council (the Council) adopts the repeal of §171.1 and §171.2; and adopts new §§171.1 - 171.6, regarding requirements for reporting the activity of the courts of Texas. The repeal of §171.1 and §171.2 is adopted without changes to the proposal as published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2423). The new §§171.1 - 171.6 are adopted with changes to the proposed text. The adopted forms and instructions may be found on the Council's website under the activities of the Committee on Judicial Data Management at <http://www.courts.state.tx.us/tjc/cte-active.asp>. To allow courts time to implement any required changes to their systems, the courts will not be required to report the data required by the new rules until September 1, 2010.

Justification for Rule Action

A major review and amendment of the monthly case activity reports for the district and county-level courts has not occurred since 1985. Over the last 23 years, significant changes in case activity have occurred, and the new reporting requirements reflect those changes. For example, there has been tremendous growth in family law and juvenile filings. Moreover, with the aging of the population, the state has started to experience an increase in probate and guardianship cases, which will continue to grow at a significant rate in the coming years. Also, the current probate statistics have never adequately accounted for the work handled by courts with probate jurisdiction.

The Judicial Council is the only entity that collects comprehensive statistics on the case activity of the Texas courts. Statistics collected from the monthly reports submitted by the district and county clerks are compiled and published in the Annual Statistical Report for the Texas Judiciary. Those statistics are used extensively by the legislature, county commissioners, and other decision-making bodies in making decisions affecting the judiciary, including the creation of new courts. The statistics also inform the citizens of Texas and others of the accomplishments of Texas courts.

How the Rule Will Function

Due to this adopted action, the courts will report data electronically, the data will more accurately reflect the work of the courts, and accordingly will be more useful.

Summary of Comments

The Council received no comments regarding repeal of the former rules and adoption of new §§171.1 - 171.6 but did receive comments about general implementation issues or about the proposed forms and instructions. The comments were from seven district clerks or staff from their offices, two county clerks, two county-level judges, and one programmer from a case management software vendor. In addition, the Council received one letter representing all district judges and another representing nearly all county court at law judges in one county.

One judge requested notification of available funds to reimburse counties for the time spent implementing the new reporting requirements or for the cost of updating software. The Council responds that it has no funds to reimburse counties for costs incurred in implementation of the new reporting requirements.

The judge also requested ample time between the date the new reporting requirements are adopted and the date that they must be implemented so that sufficient time would be available for the counties' vendors to complete the software updates. The Council agrees that although the proposed effective date for the new reporting requirements was September 1, 2009, case management vendors and county information technology departments will require more time to update their software and to allow judges, clerks, and court staff to review and modify their processes in order to capture new information. Accordingly, the Council is amending the implementation date to September 1, 2010, and this date is reflected in the amended §171.2.

One clerk asked whether the Office of Court Administration (OCA) would be providing new software to accommodate the change in reporting or whether she would need to depend on her local information technology department to implement the changes. The Council responds that because OCA does not provide case management software, the courts' local information technology departments or software vendors will need to implement required programming changes.

One programmer from a case management software company asked when XML specifications would be available to facilitate electronic uploading of data. The Council responds that XML specifications will not be developed until late 2008 or early 2009, after OCA develops a new database and application.

The programmer and one clerk asked when guidelines for the transition between the old and new reporting systems would be available. The Council will seek guidance and input from clerks and case management software personnel before developing and distributing the guidelines in the summer of 2008.

Five clerks expressed concern about the extra workload and changes to case management system programming that the new reports would entail for their offices. One judge remarked that implementation of the new reporting requirements would necessitate costly changes to existing software programs and requested that, if the change was necessary, no further changes be made "for years to come." The Council agrees that the implementation of the new reporting system will result in additional work for the clerks and that many clerks and counties will incur expenses for the changes to their case management software because of the new reporting requirements. The changes to the monthly case activity reports for the district and county-level courts will allow the Judicial Council to collect data that more accurately reflects the work of those courts, which will greatly increase the usefulness of the data. The Council has endeavored to include data elements that will accurately reflect the work of our courts for the next five or more years.

One clerk asked whether reports for the county courts at law would be similar to the reports for the district courts, because county courts at law have concurrent jurisdiction with the district courts. The Council responds that the new report for the county courts at law includes civil, family and criminal (felony) sections identical to those in the district court report to more accurately capture the workload of the county courts at law.

One judge commented that the proposed instructions do not take into account jurisdictions where a case may be filed in one court

and disposed in another under an exchange of benches system, thereby compromising the utility of the reports as a measure of the activity of a particular court. The Council responds that the case activity statistics reported and published by OCA are countywide statistics by court level (e.g., district court level or county court level), not individual court statistics. Thus, an exchange of benches does not affect the statistics if the courts are all of the same level. If the exchanging courts are on different levels, the case should be credited to the court that disposed of the case, as is required with the current reporting system.

Eighteen judges and two court-related personnel from one county expressed concern about counting certain matters related to criminal cases such as bond forfeitures, nondisclosures, seizure and forfeitures under the All Other Civil Cases category. Since these matters are normally heard by the criminal courts in counties with specialized courts, the current proposal may mislead policymakers as to the number of cases heard by the different types of courts. Instead, the commenters suggested that these matters be counted under a different category for "Civil Cases Relating to Criminal Matters." The Council agrees with the comments and the suggestion, and has amended the rules, forms and instructions accordingly. The new civil case type categories were added to the rules in §§171.4(b)(2)(A), 171.5(b)(2)(A), and 171.6(b)(2)(A).

Two clerks remarked that the expansion in the number of case categories would prove burdensome to their staff, which would need to read petitions to identify the appropriate case category. One of these clerks also suggested that a party to the case may have difficulty selecting from the large number of categories, and that the additional criminal case type categories will require a determination as to what penal code section goes with what case type category. The Council agrees that categorizing the case filings may prove burdensome for the clerks, and notes that OCA will publish on its web site model cover sheets for family law, civil, criminal, and juvenile cases, and updated information as to which penal code sections apply to which criminal case type categories. Local rules requiring a cover sheet on initial filing of a case would place the classification burden on the filing party or counsel for the party rather than on the clerk.

Three clerks remarked that they did not have case management systems or processes set up to track some of the proposed data elements, such as Cases Set for Review, Mistrials, Cases with Retained Counsel, and various types of hearings. They remarked that court personnel would need to provide the necessary information or that their case management systems did not currently have a place to capture this type of information. The Council responds that data elements were tied whenever possible to documents that the clerk typically would see. In some cases, however, a particular data element was considered so important for capturing information on court workload that it was included even though many clerks have not historically had access to the information needed to gather and report it. Collection of this data will require collaboration between the clerks' offices and the courts to determine the best way to gather the information.

The category for cases with retained counsel was requested by the Task Force on Indigent Defense. The three categories of representation are appointed, retained, and *pro se*. Jurisdictions already report cases with appointed counsel; requiring the report for cases with retained counsel would assist the Task Force on Indigent Defense to monitor statewide compliance with the mandates of the Fair Defense Act.

During the comment period for this rule proposal of the Judicial Council, the Judicial Committee on Information Technology published in the April 4, 2008, issue of the *Texas Register* (33 TexReg 2766), proposed new 1 TAC §177.1 and §177.2, regarding electronic data interchanges in conformance with the National Information Exchange Model (NIEM). The Judicial Council notes and supports this proposal but does not amend the text of the adopted rules, because at this point none of the judicial data reporting requirements are case-specific.

1 TAC §171.1, §171.2

Statutory Authority

The repeal is adopted under §71.019 of the Texas Government Code, which authorizes the Council to adopt rules expedient for the administration of its functions; and §71.035 of the Texas Government Code, which authorizes the Council to require a state justice, judge, clerk, or other court official, as an official duty, to comply with reasonable requirements for supplying statistics pertaining to the amount and character of the civil and criminal business transacted by the court or other information on the conduct, operation, or business of the court or the office of the clerk of the court.

No other statutes, articles, or codes are affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 29, 2008.

TRD-200802806

Margaret Bennett

General Counsel for Office of Court Administration
Texas Judicial Council

Effective date: June 18, 2008

Proposal publication date: March 21, 2008

For further information, please call: (512) 463-6321



1 TAC §§171.1 - 171.6

Statutory Authority

The new rules are adopted under §71.019 of the Texas Government Code, which authorizes the Council to adopt rules expedient for the administration of its functions; and §71.035 of the Texas Government Code, which authorizes the Council to require a state justice, judge, clerk, or other court official, as an official duty, to comply with reasonable requirements for supplying statistics pertaining to the amount and character of the civil and criminal business transacted by the court or other information on the conduct, operation, or business of the court or the office of the clerk of the court.

No other statutes, articles, or codes are affected by these sections.

§171.1. Authority to Adopt and Purpose of Rules.

These rules are adopted under the authority granted by §71.019 of the Texas Government Code, which authorizes the Texas Judicial Council to adopt rules expedient for the administration of its functions; and §71.035 of the Texas Government Code, which authorizes the council to require a state justice, judge, clerk, or other court official, as an official duty, to comply with reasonable requirements for supplying statistics pertaining to the amount and character of the civil and criminal

business transacted by the court or other information on the conduct, operation, or business of the court or the office of the clerk of the court.

§171.2. General Reporting Requirements.

District clerks, county clerks, justices of the peace, and municipal judges shall submit a summary-level court activity report each month to the Office of Court Administration (OCA) using the methods required by this chapter no later than 20 days following the end of the month reported. The revised reporting requirements of this chapter will take effect with reports beginning September 1, 2010. OCA shall maintain and update reporting instructions and forms initially approved by the Texas Judicial Council, and shall continually make the instructions and forms available by publishing them on its website and by other appropriate means.

§171.3. Types of Cases to be Counted and Reported.

(a) Criminal cases. Criminal cases include felony and misdemeanor cases. The number of criminal cases to be reported is based on the number of defendants named in the charging instrument. If a single charging instrument names more than one defendant, it is counted as more than one case. If the same defendant is charged in more than one charging instrument, it is counted as more than one case. If a charging instrument contains more than one count as provided by Article 21.24, Code of Criminal Procedure, it is reported as one case under the most serious offense alleged.

(b) Civil cases. Civil cases are counted and reported when an original petition is filed (no matter how many parties are involved) or when a case is added to the docket in a manner other than the filing of a new, original case, including but not limited to the following: the granting of a motion for new trial of a case previously disposed of; the transfer of a case from another county on change of venue; the remand of a case that had been appealed; the granting of a severance; and the docketing of a writ of garnishment or bill of review.

(c) Family law cases. Family law cases are counted and reported when an original petition is filed (no matter how many parties or children are involved), when a show cause motion, motion to modify, or similar motion is filed following entry of original judgment, or when any other case is filed under the Texas Family Code.

(d) Juvenile cases. Juvenile cases are counted and reported based on the number of respondents named in a petition for adjudication of a child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision, as governed by Title 3 of the Texas Family Code. If the same respondent is charged in more than one petition, it is counted as more than one case. If one petition contains more than one count, it is counted as one case under the most serious offense alleged.

(e) Probate and guardianship cases. Probate and guardianship cases are counted and reported based on the number of proceedings filed or heard each month.

(f) Mental health cases. Mental health cases are counted and reported based on the number of applications filed or hearings held each month.

§171.4. District Court Reports.

(a) Method. The district clerk of each county shall submit a district court activity report of the criminal, civil, family law and juvenile cases in the county's district courts. A separate report may be submitted for each district court or a single report may be submitted showing the combined activity of all the district courts in the county. Unless OCA grants a waiver for good cause, the district clerk shall submit the reports by electronic means approved by OCA. The maximum duration of a waiver is one year, but OCA may approve successive waivers.

(b) Reporting Categories.

(1) Criminal Cases.

(A) Criminal case type categories. The monthly report contains the following categories of felony case types: capital murder, murder, other homicides, aggravated assault or attempted murder, sexual assault of an adult, indecency with or sexual assault of a child, family violence assault, aggravated robbery or robbery, burglary, theft, automobile theft, drug sale or manufacture, drug possession, felony D.W.I., and other felonies; and a misdemeanor case type category for all misdemeanors.

(B) Criminal case activity categories. The monthly report contains sections for reporting cases on docket, dispositions, supplemental information and additional court activity.

(C) Report of a request for a hate crime finding. This section of the monthly report requests information pursuant to Article 2.211 of the Code of Criminal Procedure.

(2) Civil Cases.

(A) Civil case type categories. The monthly report contains the following categories of civil cases: injury or damage - motor vehicle, injury or damage - medical malpractice, injury or damage - other professional malpractice, injury or damage - asbestos/silica product liability, injury or damage - other product liability, other injury or damage, real property - eminent domain, other real property, contract - consumer/commercial/debt, other contract, civil cases relating to criminal matters, other civil cases, and tax cases.

(B) Civil case activity categories. The monthly report contains sections for reporting cases on docket, dispositions and additional court activity.

(3) Family Law Cases.

(A) Family law case type categories. The monthly report contains the following categories of family law cases: divorce - children, divorce - no children, parent/child - no divorce, child protective services, termination of parental rights, adoption, protective orders - no divorce, Title IV-D - paternity, Title IV-D - support order, and Title IV-D - UIFSA, all other family law cases, and post-judgment actions for modification - custody, modification - other, enforcement, and Title IV-D.

(B) Family law case activity categories. The monthly report contains sections for cases on docket, dispositions and additional court activity section.

(4) Juvenile Cases.

(A) Juvenile case type categories. The monthly report contains a category for conduct indicating a need for supervision (C.I.N.S.) cases and the following categories of delinquent conduct cases: capital murder, murder, other homicides, aggravated assault or attempted murder, assault, indecency with a child or sexual assault, aggravated robbery or robbery, burglary, theft, automobile theft, felony drug offenses, misdemeanor drug offenses, D.W.I., contempt of court, and all other offenses.

(B) Juvenile case activity categories. The monthly report contains sections for reporting cases on docket, adjudications, dispositions and additional court activity.

§171.5. *Statutory County Court Reports.*

(a) Method. Each district clerk or county clerk who maintains the records for the statutory county courts (including statutory probate courts) of a county shall submit a court activity report of criminal, civil, family law, juvenile, probate and guardianship, and mental health cases

for these courts. A separate report may be submitted for each statutory county court or a single report may be submitted for all statutory county courts in the county. Unless OCA grants a waiver for good cause, the clerk shall submit the reports by electronic means approved by the OCA. The maximum duration of a waiver is one year, but OCA may approve successive waivers.

(b) Reporting Categories.

(1) Criminal Cases.

(A) Criminal case type categories. The monthly report for criminal cases is divided into sections for misdemeanors and felonies.

(i) Misdemeanor case types. The report contains the following categories for reporting misdemeanor cases: D.W.I. - first offense, D.W.I. - second offense, theft, theft by check, drug possession - marijuana, drug offenses - other, family violence assault, other assault, traffic, D.W.L.S./D.W.L.I., and other misdemeanor cases.

(ii) Felony case types. The report contains the following categories for reporting felony cases: capital murder, murder, other felony homicides, aggravated assault or attempted murder, sexual assault of an adult, indecency with or sexual assault of a child, family violence assault, aggravated robbery or robbery, burglary, theft, automobile theft, drug sale or manufacture, drug possession, felony D.W.I., and other felonies.

(B) Criminal case activity categories. The monthly report contains sections for reporting cases on docket, dispositions, supplemental information and additional court activity.

(C) Report of a request for a hate crime finding. This section of the monthly report requests information pursuant to Article 2.211 of the Code of Criminal Procedure.

(2) Civil Cases.

(A) Civil case type categories. The monthly report contains the following categories of civil cases: injury or damage - motor vehicle, injury or damage - medical malpractice, injury or damage - other professional malpractice, injury or damage - asbestos/silica product liability, injury or damage - other product liability, other injury or damage, real property - eminent domain, other real property, contract - consumer/commercial/debt, other contract, civil cases relating to criminal matters, all other civil cases, and tax cases.

(B) Civil case activity categories. The monthly report contains sections for reporting cases on docket, dispositions and additional court activity.

(3) Family Law Cases.

(A) Family law case type categories. The monthly report contains the following categories of family law cases: divorce - children, divorce - no children, parent/child - no divorce, child protective services, termination of parental rights, adoption, protective orders - no divorce, Title IV-D - paternity, Title IV-D - support order, Title IV-D - UIFSA, all other family law cases, and post-judgment actions for modification - custody, modification - other, enforcement, and Title IV-D.

(B) Family law case activity categories. The monthly report contains sections for reporting cases on docket, dispositions and additional court activity.

(4) Juvenile Cases.

(A) Juvenile case type categories. The monthly report contains a category for C.I.N.S. cases and the following categories of

delinquent conduct cases: capital murder, murder, other homicides, aggravated assault or attempted murder, assault, indecency with a child or sexual assault, aggravated robbery or robbery, burglary, theft, automobile theft, felony drug offenses, misdemeanor drug offenses, D.W.I., contempt of court, and all other offenses.

(B) Juvenile case activity categories. The monthly report contains sections for reporting juvenile case activity for cases on docket, adjudications, dispositions and additional court activity.

(5) Probate and Guardianship Cases.

(A) Probate and guardianship case type categories. The monthly report contains the following categories for reporting probate and guardianship case types: decedents' estates (independent administration, dependent administration, and all other estate proceedings), guardianships (minor and adult), and other cases.

(B) Probate and guardianship activity categories. The monthly report contains activity report categories for cases on docket and additional information.

(6) Mental Health Cases.

(A) Mental health case type categories. The monthly report contains the following categories for reporting mental health cases: temporary mental health services, extended mental health services, modification - inpatient to outpatient, modification - outpatient to inpatient, and orders to authorize psychoactive medications.

(B) Mental health activity categories. The monthly report contains activity report categories for intake, hearings, and other information.

§171.6. Constitutional County Courts Reports.

(a) Method. County clerks shall submit a court activity report of criminal, civil, juvenile, probate and guardianship, and mental health cases for each constitutional county court. Unless OCA grants a waiver for good cause, county clerks shall submit the reports by electronic means approved by the OCA. The maximum duration of a waiver is one year, but OCA may approve successive waivers.

(b) Reporting Categories.

(1) Criminal Cases.

(A) Criminal case type categories. The monthly report contains the following categories of misdemeanor case types: D.W.I. - first offense, D.W.I. - second offense, theft, theft by check, drug possession - marijuana, drug offenses - other, family violence assault, other assault, traffic, D.W.L.S./D.W.L.I., and other misdemeanor cases.

(B) Criminal case activity categories. The monthly report contains sections for reporting cases on docket, dispositions, supplemental information and additional court activity.

(C) Report of a request for a hate crime finding. This section of the monthly report requests information pursuant to Article 2.211 of the Code of Criminal Procedure.

(2) Civil Cases.

(A) Civil case type categories. The monthly report contains the following categories of civil cases: injury or damage - motor vehicle, other injury or damage, real property, contract - consumer/commercial/debt, contract - landlord/tenant, other contract, civil cases relating to criminal matters, and all other civil cases.

(B) Civil case activity categories. The monthly report contains sections for reporting cases on docket, dispositions and additional court activity.

(3) Juvenile Cases.

(A) Juvenile case type categories. The monthly report contains a category for C.I.N.S. cases and the following categories of delinquent conduct cases: capital murder, murder, other homicides, aggravated assault or attempted murder, assault, indecency with a child or sexual assault, aggravated robbery or robbery, burglary, theft, automobile theft, felony drug offenses, misdemeanor drug offenses, D.W.I., contempt of court, and all other offenses.

(B) Juvenile case activity categories. The monthly report contains sections for reporting cases on docket, adjudications, dispositions and additional court activity.

(4) Probate and Guardianship Cases.

(A) Probate and guardianship case type categories. The monthly report contains the following categories for reporting probate and guardianship case types: decedents' estates - independent administration, decedents' estates - dependent administration, and all other decedents' estate proceedings, guardianships - minor, guardianships - adult, and other cases.

(B) Probate and guardianship activity categories. The monthly report contains activity report categories for cases on docket and additional information.

(5) Mental Health Cases.

(A) Mental health case type categories. The monthly report contains the following categories for reporting mental health cases: temporary mental health services, extended mental health services, modification - inpatient to outpatient, modification - outpatient to inpatient, and orders to authorize psychoactive medications.

(B) Mental health activity categories. The monthly report contains the activity report categories for intake, hearings, and other information.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 29, 2008.

TRD-200802807

Margaret Bennett

General Counsel for Office of Court Administration
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Effective date: June 18, 2008

Proposal publication date: March 21, 2008

For further information, please call: (512) 463-6321



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER A. GENERAL QUARANTINE PROVISIONS

4 TAC §19.2

The Texas Department of Agriculture (the department) adopts amendments to §19.2, subsections (d) and (f), concerning General Quarantine Provisions without changes to the text, as pub-

lished in the April 25, 2008, issue of the *Texas Register* (33 TexReg 3369) and will not be republished. The amendments are adopted to conform to the Texas Agriculture Code §71.051, which stipulates that nursery products or floral items be accompanied by an inspection certificate. The amendment to §19.2(d) is necessary to clarify that a nursery product or floral item must have an inspection certificate for the shipment of nursery-floral plant material originating outside the state, unless other plant material is covered under specific quarantines in this chapter. The amendment to §19.2(f) is adopted to correct the spelling of the botanical name for cogongrass.

No comments were received on the proposal.

The amendments to §19.2 are adopted under Texas Agriculture Code, §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 2, 2008.

TRD-200802852

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Effective date: June 22, 2008

Proposal publication date: April 25, 2008

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TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 232. GENERAL CERTIFICATION PROVISIONS

The State Board for Educator Certification (SBEC) adopts amendments to §§232.1 - 232.3, 232.6, 232.800, 232.810, 232.820, 232.830, 232.840, 232.850, 232.860, 232.870 - 232.872, 232.880, and 232.890 and the repeal of §232.900, concerning general certification provisions. The amendments to §§232.1 - 232.3, 232.6, 232.800, 232.810, 232.820, 232.830, 232.840, 232.850, 232.860, 232.870 - 232.872, 232.880, and 232.890 and the repeal of §232.900 are adopted without changes to the proposed text as published in the February 1, 2008, issue of the *Texas Register* (33 TexReg 828) and will not be republished.

The Texas Education Code (TEC), §21.003(a), states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B. The TEC, §21.031, authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under

the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of the state.

The SBEC adopted the following changes to 19 TAC Chapter 232 to update the rules to reflect current law and add specificity to the requirements relating to types and classes of certificates issued, certificate renewal, and continuing professional education requirements. The adopted changes also clarify the requirements for the renewal of certificates and classroom assignments.

Language has been revised in §§232.1(b), 232.800(h), 232.830(b)(2), and 232.830(e) to add that voluntary surrender of a certificate will be in lieu of revocation.

Language has been revised in §232.2(b)(5) and §232.3(c)(2) to remove specification of the types of master teacher certificates in order to avoid additional amendments to the rules if new master teacher certificate areas are added.

Language has been revised in §232.3(f) to provide that certification examinations can be recommended to the SBEC.

Adopted amendment to §232.3(h) adds a definition for Texas Education Agency (TEA) staff.

Language has been amended in §232.810 to remove subsections (b) and (c) as they are no longer applicable.

Section 232.820 has been changed by adding new subsection (c) to specify that the expiration date for a certificate issued to the holder of an educational aide certificate who obtains a standard classroom teaching certificate will be based on the issuance date of the classroom teaching certificate.

Language has been revised in §232.830(a)(1) to add that the mailing address used to notify educators will be specified in rule.

Language has been revised in §232.860(2) to specify that an accredited institution of higher education must be recognized by the Texas Higher Education Coordinating Board.

Language has been revised in §232.860(7) that clarifies that the mentoring will be mentoring of another educator.

Language has been revised in §232.870 to remove subsection (a)(8) to clarify that pre-approved providers will not include private companies, private entities, and individuals.

Section 232.900 has been repealed since it is obsolete.

Changes to Comply with Senate Bill (SB) 9, 80th Texas Legislature, 2007

As a result of passage of SB 9, language has been added to §232.6(b)(7) and §232.830(b)(8) to require that an individual submit fingerprints in accordance with the TEC, §22.0831.

Technical Changes

Throughout Chapter 232, numerous grammatical and technical changes have been made, such as replacing the term "Executive Director" with the term "TEA staff" and replacing the term "Board" with the term "State Board for Educator Certification." Also, statutory citation references have been updated and standardized to reflect current law and *Texas Register* formatting requirements.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Following the January 2008 SBEC meeting, the proposed revisions to 19 TAC Chapter 232 were filed with the *Texas Register* initiating the official public comment period. The following comment was received regarding the proposed revisions.

Comment: An individual commented that the rules should be amended to allow a person who has (1) received a letter of completion for a bachelor's degree from a college or institution of higher education; (2) passed the Examination for the Certification of Educators in Texas (ExCET) tests in his or her field or area; and (3) completed all coursework towards a bachelor's degree to apply for a probationary or temporary teaching certificate until the degree is conferred in the next graduation period. The individual described her personal situation in which she was unable to be hired as a teacher, while waiting for her degree to be conferred, even though she had completed all coursework and passed all ExCET tests. The individual further stated that an applicant should be allowed to substitute a letter from a university stating that the applicant had met all degree requirements for the actual bachelor's degree that is currently required.

Board Response: The SBEC disagreed and took action to adopt, subject to State Board of Education (SBOE) review, the rules as published as proposed. The degree requirement standard should not be changed from the current standard. Until a university has conferred a degree, there is no assurance that the degree will be granted. The best evidence that a degree has been earned is the degree itself. Supporting documentation other than the degree could be subject to some form of contingency. The TEA staff has determined that if such a rule change were to be made, the change would need to be made to 19 TAC Chapter 230, Professional Educator Preparation and Certification, §230.481, General Provisions, which contains the requirement for a bachelor's degree.

The SBOE took no action on the review of the amendments to 19 TAC §§232.1 - 232.3, 232.6, 232.800, 232.810, 232.820, 232.830, 232.840, 232.850, 232.860, 232.870 - 232.872, 232.880, and 232.890 and the repeal of §232.900 at the May 23, 2008, SBOE meeting.

SUBCHAPTER A. TYPES AND CLASSES OF CERTIFICATES ISSUED

19 TAC §§232.1 - 232.3, 232.6

The amendments are adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for

which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(5), which requires the SBEC to propose rules that provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to the TEC, §21.052; §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements.

The adopted amendments implement the TEC, §§21.003(a), 21.031, 21.041(b)(1) - (5) and (9).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 2, 2008.

TRD-200802822

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State Board for Educator Certification

Effective date: June 22, 2008

Proposal publication date: February 1, 2008

For further information, please call: (512) 475-1497

SUBCHAPTER B. CERTIFICATE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

19 TAC §§232.800, 232.810, 232.820, 232.830, 232.840, 232.850, 232.860, 232.870 - 232.872, 232.880, 232.890

The amendments are adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.031(a), which states that the State Board for Educator Certification (SBEC) is established to recognize public school educators as professionals and to grant educators the authority to govern the standards of their profession, and that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; and §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements.

The adopted amendments implement the TEC, §§21.003(a), 21.031(a), 21.041(b)(1) - (3) and (9).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 2, 2008.

TRD-200802823

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Effective date: June 22, 2008

Proposal publication date: February 1, 2008

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19 TAC §232.900

The repeal is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.031(a), which states that the State Board for Educator Certification (SBEC) is established to recognize public school educators as professionals and to grant educators the authority to govern the standards of their profession, and that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; and §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements.

The adopted repeal implements the TEC, §§21.003(a), 21.031(a), 21.041(b)(1) - (3) and (9).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 2, 2008.

TRD-200802824

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Effective date: June 22, 2008

Proposal publication date: February 1, 2008

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CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

19 TAC §§233.1 - 233.9, 233.11 - 233.14

The State Board for Educator Certification (SBEC) adopts amendments to §§233.1 - 233.9 and 233.11 - 233.14, concerning categories of classroom teaching certificates. The amendments are adopted without changes to the proposed

text as published in the February 1, 2008, issue of the *Texas Register* (33 TexReg 837) and will not be republished. The adopted amendments to §§233.1 - 233.9 and 233.11 - 233.14 update the rules to reflect current law and clarify the appropriate certification for specific assignment eligibility for the holders of the Early Childhood-Grade 4, Early Childhood-Grade 6, Grades 4-8, Grades 8-12, and Early Childhood-Grade 12 certificates.

The Texas Education Code (TEC), §21.003(a), states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B. The TEC, §21.031(b), states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of the state.

The SBEC rules in 19 TAC Chapter 233 establish the general categories of classroom teaching certificates, specific grade levels and subject areas of classroom certificates, and assignments that may be taught by the holder of each certificate.

The SBEC adopted amendments to 19 TAC Chapter 233 that clarify the categories and requirements for classroom teaching certificates, including changes to 19 TAC §233.1, General Authority, that specify the applicable requirements to be issued a certificate, such as the passing of an examination. The following adopted changes also establish certificates for Bilingual Generalist: Early Childhood-Grade 6 in 19 TAC §233.6 and English as a Second Language Generalist: Early Childhood-Grade 6 in 19 TAC §233.7.

Language has been revised in §233.1(e) to clarify that a person seeking an initial certificate must pass the appropriate grade level of pedagogy and professional responsibility certification examination in addition to passing the appropriate content subject examination(s) for the certification sought. Language has also been added in subsection (e) that authorizes an educator to use a passing score on an examination to obtain a certificate within two years (rather than one year) after the elimination of the examination in the case of catastrophic illness of the educator or an immediate family member or due to an educator's military service.

Language has been revised in §233.1 to add subsection (f) to address technology applications. The adopted amendment allows the holder of a certificate valid for Grades 4-8 to teach technology applications in those grade levels.

Language has been modified in §233.2 to add technology applications to the list of subjects the holder of a Generalist: Early Childhood-Grade 4 or Generalist: Early Childhood-Grade 6 certificate can teach. The Texas Education Agency (TEA) staff have verified that the technology application standards are included in the Pedagogy and Professional Responsibilities Generalist: Early Childhood-Grade 4 certification examination.

As a result of issues raised regarding teaching assignments at the September 27, 2007, stakeholder meeting, the following changes are also adopted:

Language has been added to §233.3(d) to clarify that the English Language Arts and Reading: Grades 8-12 certificate holder may not teach Journalism and Speech courses. Following the stakeholder meeting, the TEA staff reviewed the English Language

Arts and Reading: Grades 8-12 certification test standards and determined that none of the Journalism content knowledge and standards were addressed in the certification examination and only 10 percent of the examination addressed the Speech content knowledge and standards.

Language has been revised in §233.4(a) to include Algebra I for high school credit. Following the stakeholder meeting, the TEA staff reviewed the Mathematics: Grades 4-8 certification test standards and determined that 21 percent of the Algebra content knowledge and standards were addressed in the certification examination.

Language has been added to §233.12(g) to clarify that the Business Education: Grades 6-12 certificate holder may not teach Economics courses. Following the stakeholder meeting, the TEA staff reviewed the Business Education: Grades 6-12 certification test standards and determined that only four to seven percent of the Economics content knowledge and standards were addressed in the certification examination.

The section title for §233.5 has been revised to include computer science.

Technical Changes

Throughout Chapter 233, numerous grammatical and technical changes have been made. Also, statutory citation references have been updated and standardized to reflect current law and *Texas Register* formatting requirements.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Following the January 2008 SBEC meeting, the proposed amendments to 19 TAC Chapter 233 were filed with the *Texas Register* initiating the official public comment period. The following comments were received regarding the proposed amendments.

Comment: The Texas Classroom Teachers Association (TCTA) commented that §233.1(e) should be further revised to establish a deadline of one year from the date the examination is eliminated, rather than one year from the date the applicant passed the eliminated examination, if applying for certification using an examination that has been eliminated. The TCTA stated that such a revision would make the provision more uniform and easier for the agency to enforce.

Board Response: The SBEC disagreed and took action to adopt, subject to State Board of Education (SBOE) review, the rule as published as proposed that specifies a fixed deadline. Section 233.1(e) provides notice to the educator that an application should be filed within one year of the date on which the applicant passed an examination.

Comment: Several individuals asked for clarification on whether the proposed amendment to §233.4(a), allowing an educator with a Mathematics: Grades 4-8 certificate to teach Algebra I for high school credit, will be extended to other subject areas.

Board Response: The SBEC offers the following clarification. The provision in §233.4(a) applies specifically to Algebra I because the Texas Essential Knowledge and Skills for Algebra I are contained in the content area examination for the Mathematics: Grades 4-8 certification. At this time, the TEA staff has no plans to recommend applying similar provisions to other subject

areas. Extensive reviews of content area certification examinations would need to be conducted.

The SBOE took no action on the review of the amendments to 19 TAC §§233.1 - 233.9 and 233.11 - 233.14 at the May 23, 2008, SBOE meeting.

The amendments are adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(6), which requires the SBEC to propose rules that provide for special or restricted certification of educators, including certification of instructors of American Sign Language.

The adopted amendments implement the TEC, §§21.003(a), 21.031, 21.041(b)(1), (2), (4), and (6).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 2, 2008.

TRD-200802825

Karen Loonam

Deputy Associate Commissioner, Educator Certification and Standards,
Texas Education Agency

State Board for Educator Certification

Effective date: June 22, 2008

Proposal publication date: February 1, 2008

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 19. POLYGRAPH EXAMINERS BOARD

CHAPTER 391. POLYGRAPH EXAMINER INTERNSHIP

22 TAC §391.5

The Polygraph Examiners Board adopts an amendment to §391.5, concerning Supervision and Internship Review, without changes to the proposed text as published in the April 4, 2008,

issue of the *Texas Register* (33 TexReg 2773) and will not be republished.

Section 391.5 is amended to improve internship which will better serve the public needs.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 28, 2008.

TRD-200802798

Frank DiTucci

Executive Officer

Polygraph Examiners Board

Effective date: June 17, 2008

Proposal publication date: April 4, 2008

For further information, please call: (512) 424-2058



CHAPTER 393. GENERAL

22 TAC §393.1

The Polygraph Examiners Board adopts an amendment to §393.1, concerning Meetings, without changes to the proposed text as published in the April 4, 2008, issue of the *Texas Register* (33 TexReg 2774) and will not be republished.

Section 393.1 is amended to correct a typo from "Texas Government Code Chapter 552" to "Texas Government Code Chapter 551".

One comment was received in favor of the rule.

The amendment is adopted under the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 28, 2008.

TRD-200802799

Frank DiTucci

Executive Officer

Polygraph Examiners Board

Effective date: June 17, 2008

Proposal publication date: April 4, 2008

For further information, please call: (512) 424-2058



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 56. FAMILY PLANNING

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§56.1 - 56.3 and §§56.17 - 56.19, the repeal of §§56.4 - 56.16, and new §§56.4 - 56.16, concerning the provision of family planning services without changes to the proposed text as published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2107) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments, repeals, and new sections are necessary to assist the department in the implementation of the federal Title X funding regulations.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 56.1 - 56.19 have been reviewed, and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. However, the department also has determined that §§56.4 - 56.16 should be repealed and replaced with new rules.

SECTION-BY-SECTION SUMMARY

Amendments to §§56.1 - 56.3 incorporate the current department and program names to be consistent with current terminology used by the department.

Amendments to §56.1 provide flexibility in the current department and program policy manual to be used.

Amendments to §56.2 incorporate the current department and program names to be consistent with current terminology used by the department.

The amendment to §56.3 provides increased clarity concerning the purpose of the family planning programs.

Existing §56.4 is repealed because the Family Planning Advisory Committee was abolished by the Executive Commissioner of the Health and Human Services Commission in 2003 as authorized by the 78th Legislature. New §56.4 clarifies that while payment rates for services under Titles V, X, and XX are set by the department, the commission sets fees, charges and rates for family planning services provided under Title XIX (Medicaid).

New §56.5 allows providers flexibility among available contraceptive methods they are required to keep in stock. This provision also ensures compliance with Title X regulations.

New §56.6 clarifies that abortion is not considered a method of family planning, and that no state-appropriated funds may be used to pay the direct or indirect cost of abortion procedures.

New §56.7 clarifies the role of the Health and Human Services Commission in administering the Title XIX Medicaid family planning services program.

New §56.8 specifies records retention periods and requires that records be accessible by the commission and the department.

New §56.9 clarifies that Medicaid clients shall be offered family planning services within 30 days of their request for those services.

New §56.10 clarifies that clients have the right to choose their preferred method and source of family planning service, and may not be subjected to coercion to accept services.

New §56.11 states that providers must safeguard the confidentiality of clients' family planning information, and that clients must provide written authorization prior to release of personally identifying information except for reports relating to child abuse required by Texas Family Code, Chapter 261.

New §56.12 and amendments to §§56.17, 56.18, and 56.19 update the current department and program names to be consistent with current terminology used by the department.

New §56.13 rennumbers the section in the chapter and is more concise than the §56.14 being repealed.

New §56.14 corrects a typo in §56.15 being repealed. The new rule provides increased clarity concerning the type of adult participation encouraged in adolescent family planning.

New §56.15 clarifies that contractors shall make family planning and genetic services available in compliance with civil rights laws.

New §56.16 provides increased clarity for Title X contractors concerning federal regulations concerning Informational and Educational Committee(s).

COMMENTS

The department, on behalf of the commission, received one comment during the comment period. The commenter, a representative of the Coalition for Nurses in Advanced Practice, was not against the rules in their entirety, but made a recommendation for change.

Comment: Concerning §56.18, the commenter stated that the first sentence of the section should be amended to allow advanced practice nurses to order genetic services.

Response: The commission disagrees because not all advanced practice nurses are educated and/or trained in genetics specifically. Therefore, including language to allow all advanced practice nurses to prescribe genetic services would not ensure that a qualified professional is prescribing these services. No change was made to the rule as a result of this comment.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

25 TAC §§56.1 - 56.19

STATUTORY AUTHORITY

The amendments and new section are adopted under Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 2, 2008.

TRD-200802838

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: June 22, 2008

Proposal publication date: March 14, 2008

For further information, please call: (512) 458-7111 x6972



25 TAC §§56.4 - 56.16

STATUTORY AUTHORITY

The repeals are adopted under Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 2, 2008.

TRD-200802838

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: June 22, 2008

Proposal publication date: March 14, 2008

For further information, please call: (512) 458-7111 x6972



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER GG. INSURANCE TAX

34 TAC §3.833

The Comptroller of Public Accounts adopts an amendment to §3.833, concerning Certified Capital Companies and Certified Investor Premium Tax Credits, pursuant to the Insurance Code, Article 4.51, with changes to the proposed text as published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9577). House Bill 1741, 80th Legislature, 2007, adds low-income community businesses as an investment target for CAPCO's, allows an additional \$200 million in investment credits and defines "Program One" and "Program Two" investment phases.

The Comptroller received comments from various groups. Following is a summary of the comments received and the responses.

Scott Crist of Texas Ventures ATFTV II expressed support for the existing tax credit transfer process and procedures as outlined in subsection (g) and indicated that the current process should not be altered. He believes that the current system allows for diversity and flexibility and encourages more job creation by getting investment to more companies allowing more insurance companies to participate in the program. The comptroller agrees and no changes were made to subsection (g).

William Owens of Stonehenge Capital Fund Texas II LP and Talmadge Singer with Texas ACP II had previously contacted our office after reviewing a draft of proposed section and recommended that the tax credit dates referenced in subsection (g) be corrected to conform to the statute. The error was corrected before the proposed amendment was filed with the Texas Register.

Michael Korengold of Enhanced Capital Texas Fund II, LLC expresses his concern over Article 4.68(e) and subsection (g)(5)(B) which limits the amount of tax credits that a single insurance company and its affiliates may request to \$30,000,000 and he requests a change to subsection (g)(5)(B) to restrict the transferability of tax credits. The comptroller disagrees with this comment. The statute allows for the transferability of tax credits. No change will be made.

Michael Johnson of Texas ACP II LP expresses concern over Article 4.68(e) and subsection (g)(5) which limits the amount that a single insurance company (in aggregate with its affiliates) may request to \$30,000,000. The comptroller disagrees with this comment. The statute allows for the transferability of tax credits. No change will be made.

Talmadge Singer with Texas ACP II suggests a change to subsection (a)(11) regarding the definition of low-income community business. The comptroller disagrees with this comment. IRS Code 1986 45D(e) is more than sufficient to define low-income community business.

Talmadge Singer with Texas ACP II suggests a change to subsection (a)(15) which defines principal business operations. The comptroller disagrees with this comment. Principal business operations shall continue to be defined within the context of the residency of businesses employees.

Talmadge Singer with Texas ACP II suggests changes to subsection (a)(19)(F)(iii) eliminating the business of financial services. The comptroller agrees with this comment and has amended subsection (a)(19)(F)(iii) accordingly.

Talmadge Singer with Texas ACP II suggests a change to subsection (g)(5) that clarifies that the maximum request for premium tax credits by any one individual certified investor applies to each of Program One and Program Two. The comptroller agrees with this comment and has amended subsection (g)(5) accordingly.

Talmadge Singer with Texas ACP II suggests a change to subsection (g)(6) that clarifies that \$200 million in total credits are available under each of Program One and Program Two for a total of \$400 million available credits. The comptroller agrees with this comment and has amended subsection (g)(6) accordingly.

Talmadge Singer with Texas ACP II suggests that a CAPCO should operate independent of other CAPCO's, including an af-

filiate, that has raised certified capital under a different program. He suggests adding a new subsection (m) to address requiring CAPCO's to operate independently of each other. The comptroller disagrees as this request is outside the bounds of the statute.

Additional edits were performed by the comptroller for purposes of clarification primarily to delineate Program One from Program Two.

Subsection (d)(4)(A) and (B) were modified to reflect the fact that a CAPCO can have more than one allocation date.

Subsection (f)(6) was modified to separate Program One from Program Two with respect to deploying 100% of a CAPCO's certified capital.

Subsection (g)(3) was modified to separate Program One from Program Two with respect to the due dates for the premium tax credit allocation forms.

This amendment is adopted under Tax Code, §111.002 and §111.0022 which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and under Insurance Code, Article 4.51, which requires the comptroller to adopt rules to administer and implement Insurance Code, Chapter 4, Subchapter B.

The amendment implements Texas Insurance Code, Chapter 4, Subchapter B.

§3.833. *Certified Capital Companies and Certified Investor Premium Tax Credits.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Administrator means the Comptroller of Public Accounts for the State of Texas.

(2) Affiliate means:

(A) a person who is an affiliate for purposes of Insurance Code, Article 823.003;

(B) a person who directly or indirectly:

(i) beneficially owns 10% or more of the outstanding voting securities or other voting or management interests of another person, whether through rights, options, convertible interests, or otherwise; or

(ii) controls or holds power to vote 10% or more of the outstanding voting securities or other voting or management interests of the other person;

(C) a person 10% or more of which the outstanding voting securities or other voting or management interests are directly or indirectly:

(i) beneficially owned by the other person, whether through rights, options, convertible interests, or otherwise; or

(ii) controlled or held with power to vote by the other person;

(D) a partnership in which the other person is a general partner; or

(E) an officer, director, employee, or agent of the other person, or an immediate family member of the officer, director, employee, or agent of the other person.

(3) Allocation date means the date on which the comptroller allocates premium tax credits to certified investors of a CAPCO under this section, except that in the case of a pro rata reallocation pursuant to subsection (g)(7)(B)(ii) of this section, the allocation date shall be the date of the reallocation.

(4) CAPCO means a certified capital company as defined herein.

(5) Certified capital means an investment of cash by a certified investor in a CAPCO that fully funds the purchase price of an equity interest in the company or a qualified debt instrument issued by the CAPCO.

(6) Certified capital company means a partnership, corporation, trust, or limited liability company, whether organized on a profit or not-for-profit basis, that is in good standing with the State of Texas, is headquartered in Texas and has as its primary business activity the investment of cash in qualified businesses and that is certified as meeting the criteria of this section.

(7) Certified investor means an insurance company or health maintenance organization licensed by the Texas Department of Insurance or other person that has state premium tax liability under Insurance Code, Chapter 4, or a successor statute, that invests certified capital pursuant to an allocation of premium tax credits under this section.

(8) Early stage business means a qualified business that satisfies at least one of the following criteria:

(A) is involved, at the time of a CAPCO's first investment, in activities related to the development of initial product or service offerings, such as prototype development or establishment of initial production or service processes;

(B) was initially organized less than two years before the date of the CAPCO's first investment; or

(C) during the fiscal year immediately preceding the year of the CAPCO's first investment had, on a consolidated basis with its affiliates, gross revenues of not more than \$2 million as determined in accordance with generally accepted accounting principles.

(9) Headquartered in Texas means the following requirements, at a minimum, are met with respect to Texas CAPCOs:

(A) the CAPCO has its principal office in Texas for operations covered under this section, in which the main investment and administrative functions of the CAPCO are conducted;

(B) the original principal books and records of the CAPCO are maintained in the Texas principal office; and

(C) a minimum of 80% of the CAPCO's expenses are spent in Texas including management fees, and administrative costs including but not limited to organizational fees, but for the purposes of this subparagraph, expenses do not include underwriting fees; closing costs (including rating agency fees, and other fees related to the closing of the CAPCO's funding); fees related to any insurance issued for a qualified debt instrument or associated premium tax credits; interest payments on indebtedness; and other expenses for services that the CAPCO demonstrates cannot be reasonably obtained in Texas.

(10) Initially organized means the date that an entity's organizational documents were first accepted as filed by the appropriate official in the state of its incorporation or organization, as applicable, or, in the case of an entity that is not required to file its organizational documents with any state official, the date on which its members, partners, or owners, as applicable, originally executed the entity's organizational documents.

(11) Low-income community has the meaning assigned by Internal Revenue Code of 1986, §45D(e).

(12) Person means a natural person or entity, including a corporation, general or limited partnership, trust, or a limited liability company.

(13) Premium tax credit allocation claim means a claim for allocation of Texas premium tax credits on a form provided by the comptroller.

(14) Primary or primarily under this section means at least 80%.

(15) Principal business operations means at least 80% of the business organization's employees reside in Texas or 80% of the business payroll is paid to individuals living in Texas.

(16) Principal office means the location in Texas that is the primary place for investment functions of the CAPCO and the principal location for books and records of the CAPCO.

(17) Program One means the program for allocation and investment of certified capital under this chapter before January 1, 2007.

(18) Program Two means that program for allocation and investment of certified capital on or after January 1, 2007.

(19) Qualified business means a business that, at the time of a CAPCO's first investment in the business:

(A) is headquartered in Texas or relocates its headquarters and principal business operations to Texas within 90 days, and based on an affidavit by an officer or owner of the business, that it intends to remain in Texas after receipt of an investment by the CAPCO;

(B) has its principal business operations in Texas or relocates its principal business operations to Texas within 90 days, and based on a copy of its business plan or other evidence of domicile, intends to maintain business operations in Texas after receipt of an investment by the CAPCO;

(C) has agreed to use the qualified investment primarily:

(i) to support its principal business operations in Texas, other than for advertising, promotion, and sales operations, which may be conducted outside of Texas; or

(ii) in the case of a start-up company, to establish and support business operations in Texas as evidenced by an affidavit of an officer or owner of the business, other than for advertising, promotion, and sales operations, which may be conducted outside of Texas;

(D) does not have more than 100 employees either full-time or part-time employees, as evidenced by official state or federal employment tax returns or an affidavit signed by an owner or director of the business and:

(i) at least 80% of its employees reside in Texas; or

(ii) pays 80% of its payroll to Texas residents;

(E) is primarily engaged in:

(i) manufacturing, processing, or assembling products;

(ii) conducting research and development; or

(iii) providing services;

(F) does not incur more than 20% of its expenses and does not receive more than 20% of its income from:

- (i) retail sales;
- (ii) real estate development;
- (iii) insurance, banking, leasing or lending; or
- (iv) the provision of professional services provided by accountants, attorneys, or physicians;

(G) is not or does not:

(i) formed or organized, directly or indirectly, by a CAPCO or an affiliate of the CAPCO as evidenced by a capitalization table prior to the initial investment and a post transaction proforma capitalization table;

(ii) a franchisee of a CAPCO; or

(iii) an affiliate of the CAPCO; or

(iv) have any financial relationship with a CAPCO before the date on which the CAPCO makes its first investment in such business.

(20) Qualified debt instrument means a debt instrument issued by a CAPCO, at par value or a premium that:

(A) has an original maturity date of at least five years after the date of issuance;

(B) has a repayment schedule that is not faster than a level principal amortization over five years, including payments of cash and tax credits. A repayment schedule is not faster than a level principal amortization over five years if the repayment schedule for the debt instrument issued by the CAPCO has a scheduled outstanding principal balance greater than a hypothetical note with the same price and yield as the CAPCO's debt instrument that provides for principal to be amortized over equal, consecutive daily payments, where payments are first allocated to accrued interest and then to principal, however, a certified investor may receive payments at any time for future earned interest, provided the amount received does not exceed the present value of that future interest payment, discounted by a factor that is not less than the stated interest rate of the debt instrument.

(C) Has no interest, distribution, or payment features that are related to the profitability of the CAPCO or the performance of the CAPCO's investment portfolio.

(21) Qualified distribution means any distribution or payment from certified capital, the return of capital from qualified investments, or the profits earned thereon by a CAPCO in connection with:

(A) the reasonable costs and expenses of forming, syndicating, managing, and operating the CAPCO, provided that the distribution or payment is not made directly or indirectly to a certified investor or an affiliate of a certified investor, including:

(i) the reasonable costs and expenses of forming, syndicating, or organizing the CAPCO, so long as these costs;

(I) shall be limited to the greater of;

(-a-) \$250,000; or

(-b-) 5.0% of the amount of certified capital the CAPCO initially received as investment from its certified investors; or

(-c-) \$1,500,000; and

(II) provided that at the time the CAPCO closes its investment from its certified investors and after deducting the aggregate of the costs of organizing, forming, syndicating, insuring and defeasing the obligations, the CAPCO must have available for qualified investments, cash and/or permissible investments in an amount equal

to at least 50% of the amount of certified capital initially received from its certified investors.

(ii) reasonable and necessary fees paid for professional services, including legal and accounting services, related to the operation of the company are limited to 1.0% in any calendar year of the amount of certified capital the CAPCO initially received as investment from its certified investors; and

(iii) an annual management fee in an amount that does not exceed 2.5% of the certified capital of the company;

(B) any projected increase in federal income or state taxes based on income or imputed income of the CAPCO, including penalties and interest related to those taxes, of the equity owners of the CAPCO resulting from the earnings or other tax liability of the CAPCO to the extent that the increase is related to the ownership, management, or operation of the CAPCO in Texas.

(22) Qualified investment means the investment of cash by a CAPCO in a qualified business for the purchase of any debt, debt participation, equity, or hybrid security of any nature or description, including a debt instrument or security that has the characteristics of debt, but that provides for conversion into equity or equity participation instruments such as options or warrants; provided that the investment must not have a final stated maturity or be subject to mandatory redemption or repurchase prior to two years from the date of initial investment and, provided further, that not more than 50% is used to refinance existing non-CAPCO debt. Notwithstanding the foregoing, a qualified investment shall not include an investment that results, or could result, in a CAPCO owning 50% or more of the voting or non-voting stock of a qualified business as evidenced by a proforma capitalization table presented to the administrator, unless:

(A) such ownership is the result of:

(i) the CAPCO's exercise of its rights and remedies following a default in the obligations of the qualified business;

(ii) the CAPCO's exercise of preemptive rights granted to it in connection with its initial investment in a qualified business, provided such rights are exercised in connection with an investment in such qualified business by a party other than the CAPCO or an affiliate of the CAPCO;

(iii) the operation of any anti-dilution rights granted to a CAPCO in connection with its initial investment in a qualified business; or

(B) such investment is approved by the comptroller prior to its being made.

(23) State premium tax liability means:

(A) any gross insurance premium tax or health maintenance organization gross receipts tax liability incurred by any person under Insurance Code, Chapter 4; or

(B) if the gross premium tax liability imposed under Insurance Code, Chapter 4, on January 1, 2003, is eliminated or reduced, any substitute tax liability imposed on an insurance company or other person that had premium tax liability or health maintenance organization gross receipts tax liability under the Insurance Code on that date.

(24) Strategic investment area means an area of Texas that qualifies at the time of investment as a strategic investment area under Tax Code, Chapter 171, Subchapter O, or after the expiration of that subchapter, an area that qualified as a strategic investment area under that subchapter immediately before its expiration.

(25) Strategic investment business means a qualified business that has its principal business operations located in one or more strategic investment areas and that intends to maintain business operations in the strategic investment areas after receipt of an investment by the CAPCO as documented in the business plan or other business records that were generated at or before the time of the investment.

(b) Application Process. Any entity that seeks to operate in Texas as a CAPCO under the provisions of the Insurance Code shall comply with the application procedures set forth in this section.

(1) An applicant must file with the comptroller the following:

(A) a completed Application for Certification on a form provided by the comptroller;

(B) a nonrefundable application fee of \$7,500;

(C) an audited balance sheet with an unqualified opinion from an independent certified public accountant and any Statement of Auditing Standard No. 61 communications provided by the auditor, as of a date not more than 35 days before the date of application;

(D) documentation that the prospective CAPCO is duly organized and qualified to do business in Texas;

(E) evidence of an equity capitalization of at least \$500,000 in the form of unencumbered cash or cash equivalents;

(F) evidence that at least two principals or persons employed or engaged to manage the funds of the applicant have at least four years of experience in the venture capital industry;

(G) a commitment that if certified, the CAPCO will establish in Texas its headquarters within 60 days of certification; and

(H) biographical, personal, financial, investment, and historical data for each manager, principal, and the entity itself that provides the following, as applicable:

(i) prior venture capital firms with which the manager or principal was employed that specifically includes details on:

(I) the valuation of portfolio investments, including the manager or principal's ability to structure and execute timely and effective exits from portfolio investments;

(II) historical investment performance of prior firms managed by the same managers or principals;

(III) historical performance of the CAPCO and each of the managers or principals identified in subparagraph (F) of this paragraph, relating to investments in early stage businesses;

(IV) the investment philosophy of the firm;

(V) the history and strategy of the CAPCO and its managers or principals for obtaining investors and making investments, particularly in the targeted areas of early stage businesses and strategic investment businesses, low-income community businesses or comparable targeted early stage investments or investments in the underserved areas in Texas or other states;

(VI) disclosure of any fines, penalties, or other sanctions or actions by any state, federal, or other regulatory entity, including the Securities and Exchange Commission against the CAPCO or its managers or principals, relating to violations of any type; and

(VII) a five-year business plan, which shall include the applicant's investment strategy and investment criteria and which must comply with the requirements of subsection (a)(18) of this section with respect to qualified investments in qualified businesses.

If the comptroller determines that an applicant's investment strategy or investment criteria would not effectively further economic development in Texas the applicant's certification may be denied.

(ii) any other information that the comptroller may later request to determine the quality of the firm's management, reputation, code of ethics, investment strategy, and practices.

(2) Any false, inaccurate, or misleading information provided in the application may be grounds for rejection of the application and denial of further consideration, as well as decertification, if the information, discovered at a subsequent date, would have resulted in the denial of the certification. The applicant shall also notify the comptroller as soon as possible or within 10 business days of the following:

(A) when the applicant is unable to continue as a viable going concern; and

(B) when the applicant is subject to litigation that may affect its viability as a going concern.

(3) Management by certain entities prohibited. An insurance company, group of insurance companies, or other persons who may have state premium tax liability or the affiliates of the insurance companies or other persons may not, directly or indirectly:

(A) manage a CAPCO;

(B) beneficially own, whether through rights, options, convertible interest, or otherwise, more than 10% of the outstanding voting securities of a CAPCO; or

(C) control the direction of investments for a CAPCO.

(4) Paragraph (3) of this subsection applies without regard to whether the insurance company or other person or the affiliate of the insurance company or other person is licensed by or transacts business in Texas.

(5) Paragraphs (3) and (4) of this subsection do not preclude a certified investor, insurance company, or any other party from exercising its legal rights and remedies, including interim management of a CAPCO, if authorized by law, with respect to a CAPCO that is in default of its statutory or contractual obligations to the certified investor, insurance company, or other party.

(6) The date of receipt of an application is the postmark date or the date of the independent delivery. Incomplete applications shall be treated as not received. All submissions to the comptroller may be either by hand delivery or via overnight common carrier to the attention of CAPCO Administrator, Texas Treasury Safekeeping Trust Company, 208 E. 10th Street, Austin, Texas 78701.

(7) The comptroller shall review the application and all required documents to ensure that the applicant satisfies the requirements for certification as a CAPCO. Within 30 days of the date of receipt of an application the comptroller shall:

(A) issue the certification; or

(B) refuse to issue the certification and provide to the applicant the grounds for the refusal, including suggestions for the removal of those grounds. The comptroller shall have 10 business days from the day that the additional information was submitted to approve or reject the application and certification request.

(c) Offering material used by a CAPCO. Any offering material involving the sale of securities of a CAPCO must include the following statement: BY AUTHORIZING THE FORMATION OF A CERTIFIED CAPITAL COMPANY, THE STATE OF TEXAS DOES NOT ENDORSE THE QUALITY OF MANAGEMENT OR THE POTENTIAL FOR EARNINGS OF THE COMPANY AND IS NOT LIABLE

FOR DAMAGES OR LOSSES TO A CERTIFIED INVESTOR IN THE COMPANY. USE OF THE WORD "CERTIFIED" IN AN OFFERING DOES NOT CONSTITUTE A RECOMMENDATION OR ENDORSEMENT OF THE INVESTMENT BY THE COMPTROLLER OF PUBLIC ACCOUNTS. IF APPLICABLE PROVISIONS OF LAW ARE VIOLATED, THE STATE OF TEXAS MAY REQUIRE FORFEITURE OF UNUSED PREMIUM TAX CREDITS AND REPAYMENTS OF USED PREMIUM TAX CREDITS.

(d) Requirements for renewal and continuance of certification. A CAPCO must comply with the requirements for renewal and continuance of certification set forth in this subsection.

(1) Each CAPCO shall pay a nonrefundable renewal fee of \$5,000 to the comptroller not later than January 31 of each year, except that a renewal fee is not required within six months of the date on which the certification is issued.

(2) If a CAPCO fails to pay its renewal fee on or before January 31 of each year, the company must pay, in addition to the renewal fee, a late fee of \$5,000 to continue its certification.

(3) If a CAPCO fails to pay the renewal fee and late fee as stated in paragraph (2) of this subsection within 60 days after January 31, the CAPCO shall be subject to decertification.

(4) To continue to be certified, a CAPCO must make qualified investments of certified capital received from certified investors, with respect to Program One and Program Two, according to the following schedule:

(A) before the third anniversary of its allocation date, a CAPCO must have made qualified investments in an amount cumulatively equal to at least 30% of the certified capital allocated on such date; and

(B) before the fifth anniversary of its allocation date, a CAPCO must have made qualified investments in an amount cumulatively equal to at least 50% of the certified capital allocated on such date, subject to the following:

(i) at least 50% of the dollar amount of qualified investments required in subparagraph (B) of this paragraph must be placed in early stage businesses; and

(ii) at least 30% of the dollar amount of qualified investments required in subparagraphs (A) and (B) of this paragraph must be placed in strategic investment and/or low income community businesses.

(5) The aggregate cumulative amount of all qualified investments made by the CAPCO after its allocation date shall be considered in the computation of the percentage requirements in paragraph (4) of this subsection, subsection (i) of this section, and any other applicable provisions in this section. Any investment returns or profits received by the CAPCO from a qualified investment may be invested in another qualified investment and counted towards any requirement in this section with respect to investments of certified capital.

(6) Any amounts received by a certified capital company from a qualified business as commitment fees, closing fees, license fees, royalties or similar charges shall be considered as reductions in the CAPCO's qualified investments in the computation of the percentage requirements in paragraph (4) of this subsection, subsection (i) of this section, and any other applicable provisions in this section.

(7) A business that is classified as a qualified business, early stage business, or strategic investment business or low-income community business at the time that the CAPCO first invests in

the business remains classified as a qualified business, early stage business, or strategic investment business or low-income community business. The business may receive follow-on investments from any CAPCO, even though the qualified business may not meet the definition of a qualified business, early stage business, or strategic investment business, low income community business as applicable, at the time of the follow-on investment, unless the qualified business no longer has its principle business operations in Texas. Investment in the qualified business by another CAPCO retains the qualified business' original classification.

(8) A CAPCO may not make a qualified investment the cost of which is greater than 15% of the total certified capital of the CAPCO at the time of investment.

(9) A CAPCO shall invest any certified capital not invested in qualified investments only in the following, provided however, that any such investments are not assigned, pledged, restricted, or otherwise encumbered for the benefit of an affiliate of a CAPCO:

(A) cash deposited with a federally insured financial institution located in Texas that is not affiliated with the CAPCO;

(B) certificates of deposit in a federally insured financial institution located in Texas that is not affiliated with the CAPCO;

(C) investment securities that are obligations of the United States or its agencies or instrumentalities or obligations that are guaranteed fully as to principal and interest by the United States;

(D) debt instruments rated at least "A" or its equivalent at the time of purchase by a nationally recognized credit rating organization, or issued by, or guaranteed with respect to payment by an entity whose unsecured indebtedness is rated at least "A" or its equivalent by a nationally recognized credit rating organization and which indebtedness is not subordinated to other unsecured indebtedness of the issuer or the guarantor provided that the debt instruments are not procured through a financial institution affiliated with the CAPCO;

(E) obligations of Texas or any municipality or political subdivision of Texas provided that the obligations are not procured through a financial institution affiliated with the CAPCO; and

(F) any other investments approved in advance and in writing by the comptroller.

(10) If a qualified business moves its principal business operations outside Texas before the 90th day after a CAPCO makes an investment in it, the investment is not considered a qualified investment for the purposes of the percentage requirements in paragraph (4) of this subsection, subsection (i) of this section, and any other applicable provisions in this section.

(11) Any transfer, sale, acquisition, purchase, assignment, or merger of a CAPCO ownership interest should be pre-approved by the comptroller. In no event shall an owner or any affiliate, having an ownership interest of 10% or greater, of a CAPCO, acquire an ownership interest of 10% or greater in another CAPCO without the written approval of the comptroller. The comptroller may request any information deemed necessary to evaluate changes in CAPCO ownership.

(e) Annual review. Each CAPCO is subject to review as specified in this section to determine compliance with rules and statutes.

(1) The comptroller shall conduct an annual review of each CAPCO to:

(A) ensure that the CAPCO continues to satisfy the requirements of this section and Insurance Code, Articles 4.51 - 4.73;

(B) ensure that the CAPCO has not made any investment in violation of this section and Insurance Code, Articles 4.51 - 4.73; and

(C) determine the eligibility status of its qualified investments.

(2) Each CAPCO shall pay the reasonable cost for the annual review to be billed by the comptroller or, if the review is conducted by an independent examiner under the authority of the comptroller, the CAPCO shall reimburse the comptroller.

(f) Decertification. A CAPCO may be decertified for violations of this section or the Insurance Code, and premium tax credits may be recaptured and forfeited to the extent expressly set forth in this section or in the Insurance Code.

(1) A material violation of Insurance Code, Articles 4.56, 4.58, or 4.59 is grounds for decertification of a CAPCO. The comptroller shall notify the officers of the CAPCO in writing of the violations and that the company may be decertified after 120 days from the date on which the notice is mailed, unless the violations are corrected as determined by the comptroller.

(A) Violations of Insurance Code, Articles 4.56(a), 4.56(b), 4.56(f) or 4.56(h) shall constitute a material violation of the statutes.

(B) Two consecutive violations of the requirements of Insurance Code, Article 4.58 or 4.59 shall constitute a material violation of the statute.

(C) Two or more consecutive instances of a CAPCO failing to pay fees or penalties on a timely basis, two or more consecutive omissions of required information, a misstatements of facts in applications or annual reports, shall constitute material violations of the statutes.

(2) A hearing is available to a CAPCO that is subject to decertification as provided in Chapter 1, Subchapter A, Division 1, §§1.1 - 1.42 of this title (relating to Central Administration).

(3) Decertification is effective on the date on which the company receives notice of decertification from the comptroller. Notices will be sent via certified mail or via an overnight common carrier delivery service, and become effective on receipt by the CAPCO.

(4) In the event of decertification of a CAPCO, the comptroller shall notify any appropriate state agency of the decertification including, but not limited to the Secretary of State, the Office of Economic Development and Tourism, and the Office of the Insurance Commissioner.

(5) Premium tax credits previously claimed shall be recaptured and future premium tax credits shall be forfeited following decertification of a CAPCO in accordance with the provisions of Insurance Code, Article 4.63.

(6) When a CAPCO has invested an amount equal to 100% of its certified capital, with respect to Program One, in qualified investments, any premium tax credit claimed or to be claimed by a certified investor with respect to an investment in Program One is not subject to recapture or forfeiture. When a CAPCO has invested an amount equal to 100% of its certified capital with respect to Program Two in qualified investments, any premium tax credit claimed or to be claimed by a certified investor with respect to an investment in Program Two is not subject to recapture or forfeiture.

(7) The comptroller will send a written notice to each certified investor whose premium tax credit is subject to recapture or forfeiture for failure of the CAPCO to maintain certification eligibility.

Notification will be sent in accordance with paragraph (3) of this subsection.

(8) The comptroller may impose an administrative penalty on any CAPCO that violates the provisions of this section. Each day a violation continues or occurs is a separate violation. The maximum penalty may not exceed \$25,000 for each violation.

(A) The penalty amounts are based on the following:

(i) seriousness of the violations, including the nature, circumstances, extent, and gravity of the violation;

(ii) economic harm caused by the violation;

(iii) history of previous violations;

(iv) amount necessary to deter a future violation;

(v) efforts to correct the violation; and

(vi) any other matter that justice may require.

(B) Each of the following is a separate violation that is subject to a penalty of \$5,000. Thereafter, an additional penalty of \$5,000 will be imposed for each 30 day period the violation remains uncorrected:

(i) failure to file annual reports by January 31;

(ii) failure to maintain in the principal office in Texas all financial, administrative, management and investment records, including details of both qualified investments and unqualified investments;

(iii) failure to report names and addresses of certified investors, including the date and amount of investments;

(iv) failure to file an annual audited financial statement with an unqualified opinion and any Statement of Auditing Standard No. 61 communication by April 1; and

(v) failure to provide detailed financial and investment information that supports each annual report.

(C) Each of the following is a separate violation that is subject to a penalty of \$10,000. Thereafter, an additional penalty of \$10,000 will be imposed for each 30 day period the violation remains uncorrected:

(i) failure to maintain the primary CAPCO office in Texas;

(ii) investment in a business that is found to be unqualified, without first requesting from the comptroller an evaluation of the business as provided under subsection (g) of this section; and

(iii) failure to provide information about the CAPCO's operation within 30 days after the comptroller requests the information.

(D) If a CAPCO is assessed penalties, a re-determination hearing may be requested as provided in Tax Code, Chapter 111.

(9) Indemnity Agreements and Insurance Authorization. A CAPCO may agree to indemnify or purchase insurance for the benefit of a certified investor for losses resulting from the recapture or forfeiture of premium tax credits under Insurance Code, Article 4.63. Any guaranty, indemnity, bond, insurance policy, or other payment undertaking made under this section may not be provided by more than one certified investor of the CAPCO or affiliate of the certified investor.

(g) Premium Tax Credits. In the year a certified investor makes an investment of certified capital, the certified investor shall earn a vested premium tax credit that is equal to the amount of the

investment, subject to the other provisions in this section. With respect to Program One, beginning with the tax report due March 2, 2009, for the 2008 tax year, a certified investor may take up to 25% of these tax credits each year until all credits have been used. The credit may not be applied to estimated payments due in 2008, but may be applied to estimated payments beginning with those made in 2009. With respect to Program Two, beginning with the tax report due March 1, 2013 for the 2012 tax year, a certified investor may take up to 25% of these credits each year until all credits have been used. The credit may not be applied to estimated payments due in 2012 but may be applied to estimated payments beginning with those made in 2013.

(1) The credit to be applied against state premium tax liability in any one year may not exceed the state premium tax liability of the certified investor for the taxable year. Any unused credit against state premium tax liability may be carried forward indefinitely until the premium tax credits are used.

(2) A certified investor claiming a credit against state premium tax liability earned through an investment in a Texas CAPCO is not required to pay any additional retaliatory tax levied under Insurance Code, Article 21.46, as a result of claiming that credit.

(3) A premium tax credit allocation claim form for certified investors must be prepared and executed by each CAPCO receiving an investment commitment, on a form provided by the comptroller. A CAPCO and its affiliates may not file premium tax credit allocation claims in excess of the maximum amount of certified capital for which premium tax credits may be allowed. The form shall include an affidavit of the certified investor that legally binds the investor to make an investment of certified capital in an amount allocated by the comptroller. The forms with respect to Program One are due from each CAPCO not later than the 120th day after the date the CAPCO rule is adopted. The forms with respect to Program Two are due from each CAPCO not later than January 1 2008.

(4) The comptroller shall notify each CAPCO of the amount of tax credits allocated to each certified investor not later than the 15th business day after the date on which the comptroller accepts premium tax credit allocation claims.

(5) A certified investor's tax credits are limited to the amount of certified capital as allocated or as subsequently reallocated by the comptroller and funded by the certified investor. The maximum request for premium tax credits that any one individual certified investor, on an aggregate basis with its affiliates, may request in one or more premium tax allocation claim forms submitted pursuant to paragraph (1) of this subsection may not, with respect to Program One or Program Two as applicable, exceed the greater of:

(A) \$10 million; or

(B) 15% of the maximum aggregate amount available under Insurance Code, Article 4.67(a).

(6) The total amount of credits allowed is \$200 million Program One and \$200 million for Program Two. Total annual credits, with respect to each of Program One and Program Two, are limited to the lesser of \$50 million per year, or 25% of the total amount of investment with respect to each of Program One and Program Two. A CAPCO, together with its affiliates, may not file premium tax credit allocation claims on behalf of its investors in excess of \$200 million with respect to Program One or Program Two.

(7) Pro rata allocation of credits.

(A) The comptroller shall perform a pro rata allocation of the total amount of premium tax credits under this if:

(i) the total amount of certified capital requested under paragraph (3) of this subsection exceeds the total limit on credits under paragraph (6) of this subsection; or

(ii) if an allocation of credits under clause (i) of this subparagraph has occurred and a CAPCO notifies the comptroller either by hand delivery or overnight common carrier delivery service that it did not receive an investment of certified capital equal to the amount of the investment commitment from one or more investors, as provided on the premium tax credit allocation form that is filed under paragraph (3) of this subsection, before the end of the 10th business day after the date of receipt of the notice of allocation.

(B) the pro rata allocation for each certified investor shall be computed as follows:

(i) for an allocation under subparagraph (A)(i) of this paragraph, a fraction, the numerator of which is the value determined in paragraph (5) of this subsection for each certified investor and the denominator of which is the total amount of all premium tax credit allocation claims that are filed with respect to Program One or Program Two under paragraph (3) of this subsection, for all certified investors, multiplied by the total limit on credits for such program as provided by paragraph (6) of this subsection.

(ii) for a reallocation under subparagraph (A)(ii) of this paragraph, the comptroller shall reallocate the forfeited premium tax credit allocation among the other certified investors in all CAPCOs that originally received an allocation, in an amount that will ensure a result after reallocation that is the same as if the original request for the forfeited allocation had not been included in the allocation process.

(8) Premium tax credits allocated under this subsection may be transferred or assigned as provided in §3.830 of this title (relating to Premium Tax Credit for Examination Expenses, Evaluation Fees, Assessments, and Certified Capital Companies (CAPCOs); Limitations and Transfers). The transfer or assignment of a premium tax credit does not affect the schedule for taking premium tax credits under this section. The transfer, sale, or assignment of premium tax credits, are subject to the follow conditions:

(A) Failure to comply with §3.830 of this title, could jeopardize the investor's ability to transfer premium tax credits.

(B) Any liability with respect to premium tax credits transferred pursuant to Insurance Code, Article 4.71, that are recaptured pursuant to Insurance Code, Chapter 4, Subchapter B, shall be the responsibility of the taxpayer that actually claimed the credit.

(9) If a CAPCO is decertified, the comptroller will adjust any tax report records that are impacted by the recapture or forfeiture of premium tax credits under Program One or Program Two and will enforce the collection of additional premium taxes as a result of the recapture or forfeiture. For purposes of this section in the recapture of tax credits taken, the provisions of Tax Code, §111.207, shall apply as if the limitation period had been tolled before the end of the limitation under Tax Code, §111.204. These provisions shall apply to all insurers and persons, including those who received a transfer or assignment of the credits to be adjusted or recaptured.

(h) Evaluation of Proposed Qualified Business. Before a CAPCO makes an investment, it may request that the comptroller determine whether the business is a qualified business, an early stage business, or a strategic investment business or a low-income community business. The CAPCO shall provide all information it has gathered on the business including its plan of operation and plans for future expansion. The request may be denied if the comptroller determines that the proposed investment is not consistent with the

CAPCO's investment strategy or investment criteria as approved by the comptroller at certification.

(1) Not later than 15 business days following receipt of a request, the comptroller shall issue a determination of whether the business meets the definition of a qualified business, early stage business, or strategic investment business or low-income community business.

(2) The comptroller may notify the CAPCO that an additional 15 business days will be needed to review and make the determination.

(3) If the comptroller fails to notify the CAPCO as provided under either paragraph (1) or (2) of this subsection, the business is considered to be a qualified business, early stage business, or a strategic investment business or low-income community business, as appropriate.

(i) Qualified distributions and repayment of debt. A CAPCO may make a qualified distribution at any time. A CAPCO may make a distribution or payment that is not a qualified distribution only if the CAPCO has made original qualified investments in an amount cumulatively equal to 100% of its certified capital.

(1) A CAPCO may make repayments of principal and interest on its indebtedness without regard to this subsection, and without restriction, including repayments of indebtedness of the CAPCO on which certified investors earned premium tax credits. Repayments do not relieve the CAPCO of the requirements for renewal and continuance of certification under subsection (d) of this section.

(2) If a business in which a qualified investment has been made relocates its principal business operations outside Texas during the term of the CAPCO's investment in the business, the cumulative amount of qualified investments made from Program One or Program Two, for purposes of satisfying the requirements of this subsection, is reduced by the amount of the CAPCO's qualified investments in this business. This provision shall not apply if the business demonstrates that it has returned its principal business operations to Texas not later than 90 days after the date of its relocation.

(3) If a qualified business in which a qualified investment has been made is subsequently acquired by or merged into another entity, whether headquartered inside or outside of Texas during the term of the CAPCO investment in the business, it will remain a qualified investment and not be subject to paragraph (2) of this subsection, if after the acquisition or merger and for the duration of the CAPCO's investment in the business, the business continues to operate within the remaining provisions of this section for qualified business as stated in subsection (a)(15) of this section.

(4) If, after a CAPCO initially invests in a qualified business, there is a subsequent follow on investment in that qualified business, the investment will be considered an additional qualified investment for purposes of satisfying the provision requiring investment milestones.

(j) Required reports. Each CAPCO shall report to the comptroller:

(1) as soon as practicable after receipt of certified capital, but not to exceed 45 days;

(A) the certified investors name, address, and taxpayer identification number;

(B) the date and amount of investment received by the CAPCO from each certified investor; and

(C) the type and amount of security issued by the CAPCO to the certified investors in exchange for the investment

resulting in premium tax credits, including the names of the companies that issued the security together with a copy of the security instrument.

(2) An annual report due each January 31 that contains:

(A) the amount of the CAPCO's certified capital, including details of all investments, at the end of the preceding calendar year, including but not limited to whether or not the company has invested more than 15% of its total certified capital in any one business for Program One or Program Two;

(B) a detailed listing of investment violations under this section;

(C) each qualified investment the CAPCO made during the preceding year and, with respect to each qualified investment, the number of retained jobs and the average wages paid per employee of the qualified business at the time the qualified investment was made with respect to Program One and Program Two;

(D) the number of jobs created by the investment and the average wages paid for the jobs;

(E) the classification of the qualified businesses according to the industrial sector and the size of the business;

(F) a copy of the business plan or plan of operation for each of the qualified businesses in which the CAPCO invested in the preceding year; and

(G) any other information the comptroller requires by notification or instructions to each CAPCO.

(3) An annual audited financial statement for the prior calendar year ending December 31, by April 1, that includes the opinion of an independent certified public accountant. The auditor shall also address the methods of operation and conduct of the business of the company by performing certain agreed upon procedures to determine whether:

(A) the company is complying with Insurance Code, Chapter 4, Subchapter B, with respect to the CAPCO requirements and the rules adopted in this section;

(B) the funds received by the company have been invested as required within the time provided by Insurance Code, Article 4.56(a); and

(C) the company has invested the funds in qualified businesses.

(k) Report to the legislature. The comptroller shall prepare a biennial report to the legislature with respect to results of implementation of this section. This report shall be filed with the governor, the lieutenant governor, and the speaker of the house of representatives, not later than December 15 of each even-numbered year. The report shall include:

(1) the names and number of CAPCOs holding certified capital;

(2) the amount of certified capital invested in each CAPCO;

(3) the amount of certified capital the CAPCO has invested in qualified business, including the names and locations of the businesses, as of January 1, 2006, and each subsequent year;

(4) the amount of tax credits granted based on certified investments along with the tax credits taken by year;

(5) the performance of each CAPCO with respect to renewal and reporting requirements;

(6) information concerning qualified businesses in which CAPCOs have invested, and is to include:

(A) the classification of the businesses, along with the industrial sector and size of each business;

(B) the total number of jobs created by the investment and the average wages paid for the jobs; and

(C) the total number of jobs retained as a result of the investment and the average wages paid for the jobs;

(7) a list of the CAPCOs that have been decertified or that have failed to renew the certification and the reason for any decertification.

(l) Confidentiality: any information containing confidential business or trade secrets shall be kept confidential only to the extent provided by the Texas Public Information Act, Texas Government Code, Chapter 552.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 28, 2008.

TRD-200802803

Martin Cherry

General Counsel

Comptroller of Public Accounts

Effective date: June 17, 2008

Proposal publication date: December 21, 2007

For further information, please call: (512) 475-0387



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION

SUBCHAPTER D. OTHER RULES

37 TAC §152.51

The Texas Board of Criminal Justice adopts the amendments to §152.51, Authorized Witnesses to the Execution of an Inmate Sentenced to Death, with changes to the text as published in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2909).

The amendments are necessary to add clarity, increase the number of victim witnesses to six under certain circumstances and authorize other persons to witness the execution upon approval of the TDCJ Executive Director.

A comment was received requesting a revision that would allow a spiritual advisor to accompany the victim's close relatives to an execution, as is allowed for the offender. The suggestion was incorporated into subsection (b).

The amendments are adopted under Texas Code of Criminal Procedure, art. 43.20.

Cross Reference to Statutes: Texas Government Code, §492.013.

§152.51. Authorized Witnesses to the Execution of an Offender Sentenced to Death.

(a) Purpose. The purpose of this rule is to specify those persons who are authorized to witness the scheduled execution of an offender who has been sentenced to death.

(b) Victim Witnesses. Five (5) close relatives of the victim and a spiritual advisor may be victim witnesses. The total number of victim witnesses shall not exceed six (6), unless the provision under (b)(2)(C) of this rule applies, at which time the number of victim witnesses shall not exceed seven (7).

(1) "Close relative of the victim" means the following persons in relation to the victim for whose death an offender is sentenced to death:

(A) The spouse of the victim at the time of the victim's death;

(B) A parent or stepparent of the victim;

(C) An adult brother, sister, child or stepchild of the victim (adult is defined as anyone 18 years of age or older); or

(D) An individual who had a close relationship with the victim or has a close relationship with a relative of the victim, upon the recommendation of the Victim Services Division (VSD) and the approval of the Director of the Correctional Institutions Division (CID).

(2) If there are fewer than five (5) close relatives of the victim, others may be permitted to attend the execution as follows:

(A) Close relatives of a victim for whose death the offender has been convicted but for whose death the offender is not sentenced to death;

(B) If there are still fewer than five (5) persons, close relatives of a victim for whose death the offender is unequivocally responsible, upon the recommendation of the VSD and approval of the Director of the CID; and

(C) If there are multiple victims involved relating to the offense for which the offender has been convicted and sentenced to death, the total number of witnesses shall be increased to six (6).

(3) The spiritual advisor shall be a bona fide pastor or comparable official (e.g., minister, priest or rabbi) of the victim's close relatives' religion.

(c) Offender Witnesses. Individuals that may be offender witnesses are as follows:

(1) Five (5) relatives or friends and a spiritual advisor, if requested by the condemned offender, are eligible to attend the execution of the condemned offender if:

(A) The condemned offender provides a list of witnesses and the name or type of spiritual advisor requested to attend the execution to the Classification and Records Department at least 14 days prior to the date of execution; and

(B) The witnesses and spiritual advisor requested by the offender are on the offender's approved Visitors List and the witnesses are 18 years of age or older.

(2) If less than 14 days prior to the scheduled execution the condemned offender requests to change the names of previously submitted witnesses or requested spiritual advisor, the offender shall submit a request in writing to the Director of the CID who shall approve or disapprove the changes.

(3) The spiritual advisor shall be a bona fide pastor or comparable official (e.g., minister, priest or rabbi) of the condemned offender's elected religion.

(d) Other Witnesses. The only persons other than those listed in subsection (b) and (c) above who are authorized to witness an execution are:

(1) Texas Department of Criminal Justice (TDCJ) staff or law enforcement staff as deemed necessary by the Director of the CID;

(2) Members of the Texas Board of Criminal Justice (TBCJ);

(3) Inspector General or designee and the Office of the Inspector General (OIG) assigned staff as deemed necessary by the Inspector General;

(4) TDCJ Chaplains;

(5) Walker County Judge;

(6) Walker County Sheriff;

(7) Media pool representatives consisting of:

(A) One (1) reporter from the Huntsville Item;

(B) One (1) reporter from the Associated Press (AP);

(C) Three (3) additional print media and/or broadcast media representatives selected from rotating lists of applicants maintained by the TDCJ Public Information Office; and

(8) Any other person as approved by the TDCJ Executive Director.

(e) Prohibition of Attendance. Any offender currently confined within the TDCJ is specifically denied authorization to witness the execution of an offender.

(f) Victim Notification.

(1) The VSD shall maintain a list of scheduled executions and any subsequent updates regarding significant changes pertaining to the execution (e.g., dates, court rulings, etc.). The Executive Clemency Section of the Board of Pardons and Paroles (BPP) will provide a list of scheduled executions to the VSD in an expedient manner.

(2) The VSD is responsible for notifying the victim(s) and/or close relatives of the victim of the scheduled execution date, time and location, upon request. It is the responsibility of the victim(s) and/or close relatives to notify the VSD of any subsequent address or telephone number changes and their intent to attend.

(3) The relatives of the victim shall be identified and approved by the VSD.

(4) It is the responsibility of the VSD to notify the Director of the CID, no later than five (5) days prior to the scheduled execution date, of the names and contact numbers for the victim's witnesses who plan to attend.

(5) The VSD shall contact the relatives of the victim and provide information regarding the written procedures affecting their participation.

(g) Requirements for the Execution Chamber. The room provided for the execution shall be arranged so that:

(1) There is sight and sound separation between any offender witnesses and any victim witnesses; and

(2) There is sound separation between the condemned offender and those in attendance, except arrangements shall be provided

to allow those in attendance to hear the statements of the condemned offender.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 27, 2008.

TRD-200802769

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Effective date: June 16, 2008

Proposal publication date: April 11, 2008

For further information, please call: (512) 463-0422



CHAPTER 159. SPECIAL PROGRAMS

37 TAC §159.1

The Texas Board of Criminal Justice adopts the amendments to §159.1, Substance Abuse Felony Punishment Facilities (SAFPF) Eligibility Criteria, without changes to the text, as published in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2911), and it will not be republished.

The amendments are necessary to conform the rule to state law.

The amendments are adopted under Texas Government Code §493.009 and Texas Code of Criminal Procedure, art. 42.12, §14.

Cross Reference to Statutes: Texas Government Code, §492.013.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 27, 2008.

TRD-200802770

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Effective date: June 16, 2008

Proposal publication date: April 11, 2008

For further information, please call: (512) 463-0422



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT MANAGEMENT

SUBCHAPTER A. GENERAL

43 TAC §9.3

The Texas Department of Transportation (department) adopts amendments to §9.3, Protest of Department Purchases under the State Purchasing and General Services Act. The amendments to §9.3 are adopted with changes to the proposed text as

published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2272).

EXPLANATION OF ADOPTED AMENDMENTS

House Bill 3560, 80th Legislature, 2007, adopted Government Code, §2155.0011, which transferred state purchasing duties from the Texas Building and Procurement Commission to the comptroller. Government Code, §2155.076 requires state agency protest rules to be consistent with protest rules adopted by the comptroller.

Amendments to §9.3, Protest of Department Purchases under the State Purchasing and General Services Act, update agency titles and statutory references to reflect the transfer of state purchasing responsibilities to the comptroller. Changes to the definitions, the deadline for filing a protest and an appeal, and document retention requirements are made to make the rules consistent with the rules adopted by the comptroller's office. Various minor grammatical amendments have also been made to clarify the existing provisions of this section. For consistency, "chairman" has been changed to "chair" in §9.3(g)(5).

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Government Code, §2155.076 which requires the department to adopt rules concerning protest of purchase.

CROSS REFERENCE TO STATUTE

Government Code, §2155.076.

§9.3. Protest of Department Purchases under the State Purchasing and General Services Act.

(a) Purpose. The purpose of this section is to provide a procedure for vendors to protest purchases made by the department. Purchases made by the Texas Procurement and Support Services division of the Comptroller of Public Accounts office on behalf of the department are addressed in 34 TAC Chapter 20.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--Government Code, Chapters 2151-2177, the State Purchasing and General Services Act.

(2) Commission--The Texas Transportation Commission.

(3) Department--The Texas Department of Transportation.

(4) Director of general services--The director of the general services division of the department.

(5) Director of purchasing--The director of purchasing in the general services division of the department.

(6) District engineer--The chief administrative officer in charge of a district of the department.

(7) Division--An organizational unit in the department's Austin headquarters.

(8) Executive director--The executive director of the department.

(9) Interested party--A vendor that has submitted a bid, proposal, or other expression of interest for the purchase involved.

(10) Purchase--A procurement action for commodities or non-professional services under the Act.

(c) Filing of protest.

(1) An actual or prospective bidder or offeror who is aggrieved in connection with the solicitation, evaluation, or award of a purchase may file a written protest. The protest must be addressed to the attention of the district engineer in whose district the action is being or was processed, or to the director of purchasing for purchases made on behalf of a division, but sent to the office of the director of general services. The protest must be received in the office of the director of general services within 10 working days after such aggrieved person knows, or should have known, of the action.

(2) The protest must be sworn and contain:

(A) the provision of or rule adopted under the Act that the action is alleged to have violated;

(B) a specific description of the alleged violation;

(C) a precise statement of the relevant facts;

(D) the issue to be resolved;

(E) argument and authorities in support of the protest;

and

(F) a statement that copies of the protest have been mailed or delivered to other identifiable interested parties.

(d) Suspension of award. If a protest or appeal of a protest has been filed, then the department will not proceed with the solicitation or the award of the purchase until the executive director or his or her designee, not below the level of division director, consults with the director of general services and the appropriate district engineer or the director of purchasing, and makes a written determination that the award of the purchase should be made without delay to protect substantial interests of the department.

(e) Informal resolution. The district engineer or the director of purchasing may informally resolve the dispute, including:

(1) soliciting written responses to the protest from other interested parties; and

(2) resolving the dispute by mutual agreement.

(f) Written determination. If the protest is not resolved by agreement, the district engineer or the director of purchasing will issue a written determination to the protesting party and interested parties which sets forth the reason of the determination. The district engineer or the director of purchasing may determine that:

(1) no violation has occurred; or

(2) a violation has occurred and it is necessary to take remedial action which may include:

(A) declaring the purchase void;

(B) reversing the award; and

(C) re-advertising the purchase using revised specifications.

(g) Appeal.

(1) An interested party may appeal the determination to the executive director. The written appeal must be received in the execu-

tive director's office no later than 10 working days after the date of the determination. The appeal is limited to a review of the determination.

(2) The appealing party must mail or deliver copies of the appeal to the determining district engineer or the director of purchasing and other interested parties with an affidavit that such copies have been provided.

(3) The general counsel shall review the protest, the determination, the appeal, and prepare a written opinion with recommendation to the executive director.

(4) The executive director may:

(A) issue a final written determination; or

(B) refer the matter to the commission for its consideration at a regularly scheduled open meeting.

(5) The commission may consider oral presentations and written documents presented by the department and interested parties. The chair shall set the order and the amount of time allowed for presentation. The commission's determination of the appeal shall be adopted by minute order and reflected in the minutes of the meeting.

(6) The decision of the commission or executive director shall be final.

(h) Filing deadline. Unless the commission determines that the appealing party has demonstrated good cause for delay or that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.

(i) Document retention. The department shall maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the retention schedule of the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 30, 2008.

TRD-200802814

Bob Jackson

General Counsel

Texas Department of Transportation

Effective date: June 19, 2008

Proposal publication date: March 14, 2008

For further information, please call: (512) 463-8683



SUBCHAPTER C. CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICES

43 TAC §9.38

The Texas Department of Transportation (department) adopts amendments to §9.38, Contract Management. The amendments to §9.38 are adopted without changes to the proposed text as published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2273) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Senate Bill 924, 80th Legislature, 2007, amended Government Code, Chapter 2252, Subchapter Z, relating to rules and policies adopted by state agencies regarding engineering or architectural

errors or omissions. The legislative amendments require that all state agency rules and policies that address errors and omissions contain certain specified provisions. Because the required provisions are more appropriate for a policy than for administrative rules, the department has adopted an internal policy document that contains the required provisions. In addition, standard contract provisions adequately address errors and omissions recovery. Therefore, subsection (f), dealing with errors and omissions, is not necessary and is being deleted.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, §2252.904.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 30, 2008.

TRD-200802813

Bob Jackson

General Counsel

Texas Department of Transportation

Effective date: June 19, 2008

Proposal publication date: March 14, 2008

For further information, please call: (512) 463-8683



CHAPTER 25. TRAFFIC OPERATIONS

SUBCHAPTER G. INFORMATION LOGO SIGN AND TOURIST-ORIENTED DIRECTIONAL SIGN PROGRAM

43 TAC §§25.401, 25.405, 25.406, 25.408

The Texas Department of Transportation (department) adopts amendment to §25.401, Definitions; §25.405, Commercial Establishment Eligibility; §25.406, Major Shopping Area Eligibility; and §25.408, TOD Sign Program Operation, all concerning the Information Logo Sign and Tourist-Oriented Directional Sign Program. The amendments to §§25.401, 25.405, 25.406, and 25.408 are adopted without changes to the proposed text as published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2275) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Under Transportation Code, Chapter 391, the department is responsible for managing several sign programs designed to provide motorists with information. The programs are Specific Information Logo Signs (Logo), Major Shopping Area Guide Signs (MSAG), and Tourist-Oriented Directional Signs (TOD).

House Bill 3441, 80th Legislature, Regular Session, 2007, amended Transportation Code, §391.092 to authorize the Texas Transportation Commission (commission) to establish by rule

what constitutes an eligible highway for location of Logo and MSAG signs. The statute requires that any rule adopted by the commission must be in compliance with federal law, regulations, and guidelines.

House Bill 3441 also removed the statutory definition of a major shopping area and authorized the department to determine by rule what type of retail establishment will qualify for a sign under the program. The rule must comply with federal regulations and guidelines for the sign program. The MSAG urban highway restriction was also removed from the statute allowing the department to authorize signs on any eligible highway.

The amendments are designed to implement the provisions of House Bill 3441 as well as make other minor clarifications to the existing eligibility requirements.

Amendments to §25.401, Definitions, change the definition for the term "eligible highway" as used in relation to the Information Logo Sign Program. House Bill 3441 repealed the statutory definition for eligible highway allowing the commission to set the definition by rule. This amendment removes the restrictive language regarding population and a 65 mile per hour speed limit from the definition and will allow Logo signs on any controlled access highway. Federal guidelines require the use of the signs to be limited to areas where adequate sign spacing can be achieved. The department currently allows the placement of a Logo sign on a controlled access highway under the variance program. The amendment will streamline the department's operation by removing the need for a variance request procedure and review. Due to the current policy, the department does not anticipate an increase in the number of installed Logo signs.

Amendments to §25.405, Commercial Establishment Eligibility, clarify the requirements for participation in the Specific Information Logo Sign Program.

Section 25.405(b)(2)(B) requires a food establishment prepare the food on site. The department has determined that this is too restrictive and does not reflect how some food establishments are currently operating. The department currently allows an exception to this requirement by variance. Because of the variance program, the department does not anticipate any increase in the total number of Logo signs installed under the program due to this amendment.

The requirements for eligibility for a lodging establishment under §25.405(b)(3)(B) are amended to clarify that the establishment must have 10 guest rooms with adequate sleeping accommodations. The current language only requires that the business have 10 rooms. This change will reinforce the need for participating lodging establishments to be of sufficient size and quality to accommodate the needs of the traveling public.

Amendments to §25.405(b)(4) add that camping sites have sanitary facilities for recreational vehicles to be eligible for a camping facility Logo sign. This change is needed to comply with the requirements of Transportation Code, §391.093(e)(3). The amendments also require the facility be able to accommodate all types of recreational vehicles, travel trailers, campers, and tents. This change clarifies that a Logo sign is only available to a camp facility that accommodates all types of camping.

Amendments to §25.406, Major Shopping Area Eligibility, change the criteria to qualify for a Major Shopping Area Guide sign. House Bill 3441 deleted the specific statutory definition of major shopping area; therefore, the commission can now establish new criteria to meet the recent trends in the development of

retail facilities. When the program was originally implemented, enclosed shopping malls were the typical major shopping areas. However, today many shopping areas are smaller in total size, are not totally enclosed, and consist of separate buildings of a unified theme. The changes in §25.406(a) allow signs for these new types of major shopping areas. The amendments require that there be at least 10 retail establishments, with a combined building area of at least 650,000 square feet, located within close proximity to one another, and that there be at least two anchor stores that have a combined minimum of 150,000 square feet of building area. The amendments to §25.406(a) also require that the architectural design of the buildings must be consistent and that the retail establishments must be planned, developed, and managed as a single property. These requirements have been developed through the existing variance program. The department believes that these minimum requirements will ensure that the areas eligible for an MSAG sign are major shopping areas and not neighborhood retail centers. The department currently allows shopping areas meeting these minimum requirements to obtain an MSAG sign under the variance program. Incorporating this current practice into the program rules will allow the department to streamline our internal process to operate the program. Due to the current policy, the department does not anticipate that the change in the rule will increase the number of MSAG signs.

Section 25.406(a) is also amended to remove the term "urban" from the section to comply with the changes in House Bill 3441.

Amendments to §25.408, TOD Sign Program Operation, clarify the existing requirements for a participating commercial tourist-oriented enterprise. The amendment changes the language of §25.408(a)(2)(C)(i) so that an entity is required to provide, not produce, a service or product of interest to the tourist community. The language regarding the amount of time that the entity must be opened is changed to clarify that the entity must be open five days and that one of those five days must be either Saturday or Sunday. Section 25.408(a)(2)(C)(i) is also amended to replace the requirement that the entity be an independent enterprise with the requirement that it be a tourist destination or an accommodation to clarify that to qualify for participation the entity must be of interest to tourists.

COMMENTS

Comments on the proposed amendments were received from the City of Houston. The commenter does not support the proposed amendments.

Comment: The commenter requested that the department allow the City of Houston to continue to regulate off-premise signs in the city's jurisdiction through local ordinances. The City of Houston has off-premise sign restrictions through an existing city code and the commenter feels that the choice to introduce new off-premise sign structures should remain with the local municipality.

Response: The department disagrees with the commenter. The proposed rules govern the administration of the Texas Specific Information Logo Sign Program and the Tourist-Oriented Directional Sign Program. These signs are considered traffic control devices by state and federal laws and do not constitute "off-premise" signing.

Off-premise signing is defined in 43 TAC §21.411 as "A sign displaying advertising copy that pertains to a business, person, organization, activity, event, place, service, or product not principally located or primarily manufactured or sold on the premises

on which the sign is located." Off-premise signing cannot be located in the highway right-of-way.

While the Specific Information Logo Signs and Tourist-Oriented Directional Signs allow a form of advertisement for certain types of businesses within state highway right-of-way, these signs are viewed as motorist service signing and are recognized as an official traffic control device. Unlike off-premise advertising signs, the signs under this rule are allowed only on state highway right-of-way. Importantly, Tourist-Oriented Directional Signs are not allowed within urban areas of 5,000 persons or more, which precludes installation of those signs within the City of Houston. There is nothing in the proposed rules that impacts the ability of the City of Houston to regulate off-premise signing, such as outdoor advertising billboards.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically Transportation Code, §391.092 and §391.0935, which provides the commission with the authority

to establish rules regarding the Specific Information Logo Sign Program and Tourist-Oriented Directional Sign Program.

CROSS REFERENCE TO STATUTE

Transportation Code, §391.001 and Transportation Code, Chapter 391, Subchapter D.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 30, 2008.

TRD-200802812

Bob Jackson

General Counsel

Texas Department of Transportation

Effective date: June 19, 2008

Proposal publication date: March 14, 2008

For further information, please call: (512) 463-8683

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) proposes the review of 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 66 are organized under the following subchapters: Subchapter A, General Provisions; Subchapter B, State Adoption of Instructional Materials; Subchapter C, Local Operations; Subchapter D, Special Instructional Materials; and Subchapter E, Disposition of Instructional Materials.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 66, Subchapters A - E, continue to exist. The comment period begins with the publication of this notice and must last a minimum of 30 days.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-200802815

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: May 30, 2008

Adopted Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) adopts the review of Texas Administrative Code, Title 4, Part 1, Chapter 12, concerning Weights and Measures, Chapter 19, concerning Quarantines and Noxious and Invasive Plants, and Chapter 22, concerning Nursery Products and Floral Items, pursuant to the Texas Government Code, §2001.039, and readopts all sections in Chapters 12, 19, and 22, with amendments proposed to Chapter 19 in the department's Notice of Intent to Review. The Notice of Intent to Review was published in the April 25, 2008, issue of the *Texas Register* (33 TexReg 3449).

Section 2001.039 requires state agencies to review and consider for readoption each of their rules every four years. The review must in-

clude an assessment of whether the original justification for the rules continues to exist. As part of the review process, the department proposed an amendment to Chapter 19, §19.2, concerning Inspection Certificates, which was published in the April 25, 2008, issue of the *Texas Register* (33 TexReg 3369). The department adopts the amendment to §19.2 in this issue of the *Texas Register*.

No comments were received on the proposal rule review.

The assessment by the department of Chapters 12, 19 and 22 indicates that, with the addition of the adopted amendments to §19.2, the reason for readopting without changes all remaining sections in Chapters 12, 19 and 22 continues to exist.

TRD-200802851

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: June 2, 2008

Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) adopts the review of 19 TAC Chapter 100, Charters, Subchapter A, Open-Enrollment Charter Schools, and Subchapter B, Home-Rule School District Charters, pursuant to the Texas Government Code, §2001.039. The SBOE proposed the review of 19 TAC Chapter 100, Subchapters A and B, in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2983).

The SBOE finds that the reasons for adopting 19 TAC Chapter 100, Subchapters A and B, continue to exist and readopts the rules. The SBOE received no comments related to the rule review requirement.

The SBOE is proposing amendments to 19 TAC Chapter 100, Subchapter A. Section 100.1, Application and Selection Procedures and Criteria, would be modified to update a statutory reference in subsection (k). Section 100.101, Annual Report on Open-Enrollment Charter Governance, would be amended to modify the annual governance reporting requirements for collecting identifying information about family members serving together on boards or as administrators. The proposed amendments to 19 TAC Chapter 100, Subchapter A, may be found in the Proposed Rules section of this *Texas Register* issue.

TRD-200802879

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: June 4, 2008

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The State Board of Education (SBOE) adopts the review of 19 TAC Chapter 129, Student Attendance, Subchapter A, Student Attendance Allowed, and Subchapter B, Student Attendance Accounting, pursuant to the Texas Government Code, §2001.039. The SBOE proposed the review of 19 TAC Chapter 129, Subchapters A and B, in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2984).

The SBOE finds that the reasons for adopting 19 TAC Chapter 129, Subchapters A and B, continue to exist and readopts the rules. The SBOE received no comments related to the rule review requirement.

No changes are necessary as a result of the review.

TRD-200802877

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: June 4, 2008

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

BID FORM

FOR
DEPOSITORY SERVICES
BY
_____ **INDEPENDENT SCHOOL DISTRICT**

All questions in this form should be answered and provided to the District as the Depository's bid.

The District reserves the right to reject any and/or all bids and if any portion or provision of this bid and/or any contract between Depository and District entered into is invalid, the remainder at the option of the District shall remain in full force and effect and not be affected.

BANK COMPENSATION

Does the District have the option to pay for Depository services by targeted balances or by fees? Please describe any differences in related costs to the District with either option. If the District chooses one option for the life of the contract, is there a difference in service fees?

Target Balance Compensation Basis:

The District may choose to pay for Depository services on a compensating balance basis, maintaining a targeted amount of its funds in the Depository. The District will maintain balances in the checking accounts to compensate the Depository in full or in part for services provided. Earnings credit for these balances shall be reflected on the monthly account analysis provided to the District.

Any excess collected balance may be invested daily by the Bank as directed by the District, in a District approved overnight investment, an interest bearing account, or an SEC registered money market mutual fund. The overnight investment and any index upon which the rate will be based should be listed below.

The rate history at the Depository for the months beginning MM/YY and ending MM/YY was:

ECR Rate:	_____	%
Interest Bearing Accounts:	_____	%
Money Market Accounts:	_____	%
Sweep Accounts:	_____	%

[Alternatively, the District may have the Depository complete the information by month according to Attachment A, Bank Historical Information.]

If any of these rates is based on an index rate (such as the T-Bill auction rate) stipulate the index calculation basis.

Fee Basis Compensation:

The District may choose to pay for Depository services on a straight fee basis in which no targeted balance will be maintained by the District. Fees will be assessed and paid in accordance with the Depository's proposed fees as listed on Attachment A.

DISTRICT INVESTMENTS

The District reserves the right to purchase, sell and invest its funds and funds under its control, including bond funds, as authorized by the Government Code, Chapter 2256, Public Funds Investment Act, and in compliance with the District's Investment Policy, a copy of which is attached as Attachment C [or alternatively, provide the link to the investment policy on the District's web site].

[District chooses to insert language of Option A or Option B]

Option A

The District may choose to invest in time deposits at the Depository, but all investments including CDs are bid competitively at the time of purchase.

Option B

The District may choose to invest in time deposits at the Depository. The Depository will pay interest on funds of the District placed in time deposits with maturities chosen by the District. The interest rate spread on such deposits should be indicated as above, below or equal to the "asked" yield on the comparable maturity T-Bill of the proposed time deposit being purchased as reported in an independent, financial source.

Single Maturity Time Deposits of more than \$100,000:

MATURITY

Basis point spread over(+)/under(-)

T-Bill "asked" yield [District-specified rate]

7 -- 29 Days

30 -- 59 Days

60 -- 89 Days

90 -- 179 Days

180 -- 364 Days

365 Days or More

COLLATERALIZATION

The Depository must provide either corporate surety bonds or pledged securities as per Texas Education Code §45.201. Please specify which method the Depository will use for collateralization of District funds.

Collateral Conditions

The Depository shall provide collateral equal to 102% of all District time and demand deposits plus accrued interest minus applicable FDIC coverage. Collateral will be pledged to the District and held in an independent safekeeping institution by a custodian or permitted institution as specified by the Public Funds Collateral Act (Texas Government Code, Chapter 2257). [Alternatively, the District may

specify any limitations on its preferred custodial arrangement.] The Depository will be liable for monitoring and maintaining the collateral and the required margin at all times and will provide original safekeeping notice and a monthly report of the collateral to include the security description, par amount, cusip, and market value, at a minimum.

The Depository and District shall execute a collateral agreement in accordance with FIRREA. A sample Collateral Agreement should be attached as Attachment D.

The District estimates its maximum anticipated collateral requirement to be \$_____.

[If voluntary collateral pooling is legislated during the period of this contract, the District may consider and agree to its use under this contract with mutual agreement of the Depository.]

Eligible Collateral

The District will accept only approved securities as specified by Texas Education Code §45.201 as pledged collateral.

[Alternatively, the District may require specific collateral in accordance with its Investment Policy. A reference to the District's Investment Policy would be included in that case. In that case, the following paragraph would be used instead:

The District will accept only the following as pledged collateral in accordance with its Investment Policy attached as Attachment C:

list items here]

BANKING SERVICES FEES

Based on the Depository services required by the District, the Depository shall complete the proposed fee schedule, Attachment A.

DEPOSITORY INFORMATION

Please answer the following questions concerning the Depository.

1. State full name and address of the Depository and any parent holding company. List all branch locations within the District's boundary.
2. Provide the UPBR reference or annual audited financial statement for the most current fiscal year. This may be in printed form, but an electronic link to the web site(s) is preferable. Members of Depository holding companies must include corporate annual financial statements and the individual Depository's call report for the most recent operating quarter.
3. State the Depository's rating from an independent Depository rating agency or, if not available, the rating on the Depository's senior and subordinate debt. Any change in this rating during the period of the contract must be communicated to the District in a reasonable period of time.
4. Contact Information
To insure smooth contract implementation and continuation of services, a specific account executive and a back-up must be assigned to the District account to coordinate services and expedite the solution of any problem encountered.

- a. Designate a Depository officer as a primary contact with the District.

Name _____
Title _____
Telephone # _____
Fax # _____
E-Mail _____

- b. Designate a Depository representative as a backup contact with the District.

Name _____
Title _____
Telephone # _____
Fax # _____
E-Mail _____

- c. In the event the primary and backup contacts aren't available, what is the District's procedure for an emergency contact? After hours?
 - d. Describe in detail how the Depository handles problem resolution, customer service, day-to-day contact, and ongoing maintenance for governmental clients. Please be specific about exactly whom the District will be calling and working with for the above described situations.
5. List references from at least three of the Depository's current, comparable governmental clients. Include the length of time under contract, a client contact, title, and telephone number.

6. Based on the services required by the District, please provide a proposed timeline for implementation of the contract including the timeline activities and direct responsibilities of the District and the Depository during implementation.
7. Provide a copy of all agreements (including those not directly referenced in this RFP) which will be required to be executed under the contract.
8. The Depository awarded the contract will be required to review the then-current District Investment Policy and certify in writing to that review in accordance with the Public Funds Investment Act certifying that the Depository has sufficient controls in place to avoid transactions not authorized by the Policy. [Specify one: The District has attached its investment policy to this RFP notice *or* The District has provided a link to the investment policy on the District's web site.]

BANKING SERVICES**1. Consolidated Account Structure with Sweep Mechanism**

The District is interested in earning at then-current interest rates available at all times. The District wants the option to use an automated, daily sweep to a money market mutual fund or Depository alternative account (if competitive) to reach its full investment goal. [District option: A repurchase agreement is not acceptable as a sweep investment vehicle.]

The District's current account structure is listed as Attachment B. The District does not guarantee that the balances will be maintained at these same levels.

The Depository shall clearly describe the Depository's most cost effective account structure (interest bearing accounts, ZBA accounts, or sweep, etc.).

- a. Fully describe the proposed account structure. Would a sweep be from a master account with ZBAs or directly swept from the individual accounts. Is interest distributed at the account level?
- b. State the average interest rate on the recommended alternative structure for the past twelve months.
- c. If an SEC registered money market fund is utilized for the sweep proposal, provide the full name and a copy of the prospectus.
- d. Interest earned on interest bearing accounts shall not be charged as an expense on the account analysis. Confirm acceptance of this condition.

The District may be required or may desire to open additional accounts, close accounts, or change account types during the contract period. If this occurs, the new accounts and services shall be charged at the same contracted amount or, if unanticipated, at not more than published rates.

2. Automated Cash Management Information

The District is interested in automated balance and detail information. Minimum automated services shall include [specify District requirements]:

- prior day summary and detail balance reporting on all accounts
 - intra-day detail and summary balances (on local main and payroll accounts)
 - initiation and monitoring of stop pays
 - positive pay exception transactions
 - initiation and monitoring of internal and wire transfers
 - image access
 - controlled disbursement presentment totals
- a. Fully describe the Depository's on-line service. List the system capabilities (i.e. balance reporting, wires, positive pay, stop pay, etc.).
 - b. What is the Depository's back-up process to provide balance reporting and transactions in case of system non-availability?
 - c. When is daily balance information available?
 - d. Submit samples of major screens available or provide web link access to a demonstration module.
 - e. How are individual security sign-ons assigned and who maintains the security module? How many levels of security are available?
 - f. With regard to controlled disbursements—
 - What is the cutoff time for disbursements?
 - What Federal Reserve location do these accounts clear through?
 - How does the District have access to this information?

3. Deposit Services

Standard commercial deposit services are required for all accounts.

The District expects all deposited checks to clear based on the Depository's current published availability schedule, but any expedited availability options should be noted in the bid. All cleared deposits received by the Depository's established deadline must be processed for same day ledger credit. Failure to credit District accounts in a timely fashion will require interest payment reimbursement to the District at the then-current effective Fed Funds rate.

- a. What is the Depository's daily cut-off time to assure same day ledger credit?
- b. Describe how and when credit/debit advices are sent to the District?
- c. What type deposit bags are used/required? Are these available from the Depository?
- d. In what city does item processing occur?

Remote Deposit

The District is interested in establishing remote check deposit for a few high volume locations during the contract period. These deposits include both consumer and commercial checks.

- e. What are the Depository's current capabilities in remote check deposit? Describe how checks are processed and cleared. Please state the cut-off time for same-day ledger credit.
- f. Give two comparable references with contact information.
- g. Is a daily balancing report produced? Provide a sample.
- h. What scanner equipment is required to operate the system? Is this equipment available through the Depository on a purchase or lease basis? Please list the equipment required along with its cost.

4. Standard Disbursing Services

The District is interested in positive pay services for designated accounts.

- a. Does the Depository image all checks and deposits?
- b. Are check and deposit images available on-line? When? Is a CD provided monthly? If not, are reports downloadable?
- c. How long are check and deposit images maintained on-line?
- d. Are all District checks paid without charge upon presentation?

5. Positive Pay

The District is interested in positive pay services for designated accounts on which checks are written. The positive pay process should be fully automated and web based. Check information will be transmitted electronically to the Depository on each check run and as manual checks are created.

- a. Describe the data transmission/transfer requirements for automated and manual checks.
- b. Is input available online for manual checks? If not on-line, how is information on individual manual checks transmitted to the Depository?
- c. How can check records be changed or deleted by the District, if necessary?
- d. How is the District to be notified of a positive pay exception?
- e. At what time is exception information reported to the District? At what time is the deadline for District exception elections? Are images of exceptions available?
- f. Are all checks, including those received by the tellers and vault, verified against the positive pay file before processing? How often is teller information updated?
- g. Does the Depository offer payroll positive pay?
- h. Please provide a copy of the Depository's file layout format.

6. Account Reconciliation

The District anticipates use of partial or full reconciliation services on all accounts in concert with positive pay, dependent upon cost effectiveness.

- a. Describe the partial and full reconciliation processes.
- b. With what format(s) does the Depository's system interface? What record formats are required? [As an alternative, the District can specify its interface format for the Depository to determine compatibility.] How is reconciled data sent to the District? When?
- c. Specify all reporting alternatives.
- d. Are reports available online? How long are reports maintained online? Provide a sample copy of reports.

7. Funds Transfer and Wire Services

Incoming wire transfers must receive immediate same day collected credit. Wire initiation should be available online. The District requires that wires be released the same business day if information is provided by the established deadline.

- a. Describe the process of online wire initiation. What back-up process is available for the on-line process in case of system unavailability?
- b. Is any paper transaction required for transfers or wires as follow-up?
- c. How and when will the Depository notify the District of incoming wires? Online? E-mail?
- d. Is future dating available for both repetitive and non-repetitive wires and transfers? How far in advance?
- e. What is the deadline for initiation
 - by telephone?
 - on-line?
- f. Are templates available for repetitive transfers?

8. Optical Imaging

The District desires optical images which are downloadable or on CD on all accounts.

- a. What items and reports are available on-line (checks, statements, deposit slips, deposited items, etc.)?
- b. What items are captured on the monthly CD, if provided?
- c. When are the monthly CD or imaged reports available?
- d. When and how long are statements and account analyses available on-line?

9. ACH Services

The District expects to move toward more ACH transactions for payable and receivable transactions. The District requires a pre-notification (pre-note) on all new transactions.

- a. Describe the transmission alternatives for individual ACH transactions. Is the District able to initiate individual ACH transactions on line?
- b. What filters and blocks are available on District accounts for ACH transactions?
- c. Are ACH addenda shown in their entirety on-line and on reports?
- d. What is the Depository's policy on pre-notification? Is the pre-note charged as a standard ACH transaction?
- e. What is the deadline for transmission (hour and day) for a payroll to credit employee accounts on a Friday?

10. Investments and Safekeeping Services

The Depository will be required to provide book-entry safekeeping services for any securities owned by the District. All District investments will be made by the District and instructions for clearing and safekeeping will be transmitted to the Depository in writing.

All securities must be cleared on a **delivery versus payment (DVP)** basis and ownership documented by original clearing confirmations and safe-keeping receipts provided within one business day of the transaction. Funds for investments will be drawn from a designated District DDA account. All P&I payments, coupon payments, and maturities must receive automated same day collected credit on the District designated account without requiring any additional District action.

If the Depository is not a member of the Federal Reserve or a federal home loan bank and utilizes a correspondent bank for safekeeping of District securities, the transactions will be handled through the Depository's systems and shall not require additional interaction by the District with the correspondent bank. No delay in transactions, wires or flow of funds will be acceptable under a correspondent relationship.

- a. Is the Depository a member of the Federal Reserve or a federal home loan bank? If not, name the correspondent Depository to be used for clearing and safekeeping. Describe any safekeeping arrangement proposed with a correspondent Depository including processing requirements by the District.
- b. Are security transactions available on-line for either origination or monitoring?
- c. What is the deadline for settlement instructions on a cash (same day) settlement? Is there any charge incurred for late instructions?

The District may choose to purchase time deposits from the Depository, but all time deposits will be competitively bid at the time of purchase.

11. Collateral Requirements

All the requirements, including those beyond the Public Funds Collateral Act, as stated in the District's Investment Policy and below, must be met by the Depository. The bid must state agreement to the following terms and conditions.

- All collateral pledged to the District must be held by a custodian or permitted institution as specified by the Public Funds Collateral Act (Texas Government Code, Chapter 2257) [Alternatively, the District may specify any limitations on its preferred custodial arrangement per its Investment Policy.]
- A tri-party safekeeping agreement shall be executed between the District, the Depository, and the safekeeping bank for custody of pledged securities in full compliance with FIRREA requiring a Depository resolution. (Or completion of Circular 7 if the Federal Reserve is acting as custodian. Use of the FRB will still require a depository agreement be executed between the District and the Depository.)
- All time and demand deposits above FDIC coverage shall be collateralized at a minimum of 102% of principal plus accrued interest at all times (110% on mortgage backed securities.)
- The Depository shall be contractually liable for the continuous monitoring and maintaining of collateral at the District's required margin levels.
- Pledged collateral shall be evidenced by original safekeeping receipts/report sent directly to the District by the custodian within one business day of receipt.
- The District shall receive a monthly report of collateral pledged including description, par, market value and cusip, at a minimum.

- Substitution rights shall be granted if the Depository obtains the District's prior approval and if substituting securities are received before previously pledged securities are removed from safekeeping.

Authorized collateral includes only approved securities as specified by Texas Education Code §45.201. [Alternatively, the District may specify any limitations on its preferred collateral requirements as stated in its Investment Policy.]

- a. Does the Depository propose any collateral charges? If so, under what conditions are they charged and how is the charge applied?
- b. What is the Depository's deadline for requesting collateral in excess of existing requirements?

12. Account Analysis

Monthly account analysis reports should be provided for each account and on a consolidated account basis.

- a. When is the analysis available each month?
- b. Is the account analysis available online? Is it imaged monthly?
- c. Are paper statements also sent to the District? If so, when?
- d. How long will it take the Depository to correct any billing errors on account analysis?

13. Monthly Statements

The Depository must provide monthly account statements on all accounts with complete supporting documentation.

- a. State when monthly statements will be available each month.
- b. Is the monthly statement available online? If so, when and how long? Are the statements imaged or on a CD?
- c. If imaged, are paper statements also sent to the District? If so, when?

14. Overdrafts

- a. Are all accounts aggregated for overdraft calculation purposes?
- b. State the rate basis for intra-day and inter-day overdrafts.
- c. What is the policy for daylight overdrafts?

15. Stop Payments

An automated stop pay process is desired.

- a. What are the time period options available for stop pays?
- b. What are the time period options for extended stop pay periods? How is it extended?
- c. What is the cut-off hour for same day action on stop pays?
- d. Can stop pay orders be initiated on-line? If so, is there any paper follow-up document required?
- e. What information on current and expiring stop pays is available on-line?

16. Customer Service

Does the Depository offer customer services in languages other than English? What languages are offered?

17. Service Enhancements

Based on the information provided in the RFP and your firm's knowledge of the public sector, please describe any services or technological enhancements, not previously mentioned, that should be considered for further improving the effectiveness of the District's treasury management operations.

OPTIONAL SERVICES**1. NSF Checks Represented as ACH (RCK)**

The District may want the option of the second presentment to be made by ACH to targeted dates for maximum collection potential.

- a. Is the Depository currently using ACH for collection of NSF checks? How long has the Depository been providing this service? Provide two comparable references with contact information.
- b. How are the NSF and the later ACH matched/reconciled? Does the Depository system cross reference the two transactions in any way?
- c. Is the NSF information, image, or occurrence available on-line? When and how? How long is it available online?
- d. Can the District specify any target pay day(s)?

2. Merchant Services.

The District currently accepts Visa/MasterCard/American Express/Discover/debit card payments approximating \$_____ in collections a month with an average ticket size of \$_____. There are _____(specify number) locations with _____(specify number) terminals. [Alternatively: The District is interested in possibly accepting credit card payments for various activities.] The service should include daily capture, transmission and authorization of payments at point-of-sale and on the web. Reporting would be required by location.

The District can and does comply with PCI Standards. [Insert this statement if District is capable.]

- a. Does the Depository currently offer merchant card processing services? How long has this service been available? What interface format(s) does the Depository's system supply?
- b. How many institutions and end customers do you have?
- c. Describe the fee components of a merchant card processing relationship. Provide a list of all the fees to the District. State the association fees, discount rates, and the Depository's fee per transaction.
- d. Does the Depository have software available for implementation which allows on-line payments to the District through the Depository's portal?
- e. Describe the reporting functions and data availability.
- f. Detail billing options.
- g. Describe the authorization method/process used. How are incorrect authorizations reversed?
- h. Describe your debit card processing capabilities. Do you identify between debit and credit cards on BIN number? Can you program a debit card to the lowest cost network?
- i. Describe your transmission process. Describe the monitoring and notification process if transmissions fail.
- j. Is data imaging available on line? What is available online? When? For how long?
- k. Describe the dispute resolution process.
- l. Describe your security measures for internet transactions and unauthorized use.

3. Payroll Cards/Debit Cards

The District is exploring the use of stored value cards (payroll card/debit card) as a payroll option for employees at a minimum. Card holders should have the ability to use the cards for purchases at point of sale as a debit card as well as cash withdrawals at financial institutions and ATMs.

The purchasing ability of the cards must be limited to the stored value of the card. The District may choose to not pay for access fees for the employees issued the stored value cards.

The District will be responsible for any marketing of the program and has total discretion on the distribution of the cards. The District will enroll the employees. The Depository is required to provide card holders with all processing and transaction information and reports. Services expected from the Depository would include, at a minimum:

- embossing, encoding and distributing standard cards as directed by District
 - provision of paper/electronic statements to cardholders
 - administration of accounts to include maintenance of accounts, application of funds, authorization of transactions, related tracking
 - customer service functions
- a. Does the Depository currently provide this service? If so, how long has it been available?
 - b. How many institutions and end customers use the service? Provide three comparable references for the service.
 - c. Which program (authorization marks) does your program use? (Visa, MC, etc.)
 - d. Describe the enrollment process. Is enrollment batched and web-based?
 - e. Describe the manner by which funds will be made available to the card-holders.
 - f. What are the inactivity levels for the program? Do these generate additional fees? Describe any other potential fees.
 - g. Are all funding transmissions by standard ACH? Describe the data transmission requirements and deadlines.

4. Purchasing Cards

The District may consider a purchasing card program during the contract period. Cards would be assigned to District employees for defined use.

- a. What card platforms does the Depository support (MC, Visa)? Is a third party processor used?
- b. What, if any, information is available on-line? When? Describe data download and integration capabilities. Describe reporting capabilities
- c. What client support is available? How is it provided?
- d. Describe the diverse parameters and restrictions available for the card control. How many access levels are available?
- e. Discuss settlement and corporate liability terms. Include information on Depository support for the program, the Depository's experience, settlement terms on payment, security procedures, and license requirements. How will billing be received?
- f. Describe how cards are issued, deleted or replaced. How are lost/stolen cards handled?
- g. Provide three comparable references for the service.

List of schedules/attachments provided by District:

Copy of District audited financial statements [or link to web site]
Attachment A, Volumes for Pricing Transactions (filled in with volumes)
Attachment B, District's Current Account Structure
Attachment C, District Investment Policy [or link to web site]

List of schedules/attachments to be provided by Depository:

The following information must be included with the bid:

Copy of Depository audited financial statements [or link to web site]
Corporate audited financial statements and the individual Depository's call report (for members of Depository holding companies) [or link to web site]
UPBR reference
Attachment A, Volumes for Pricing Transactions (filled in with rates)
Sample Account Analysis Statement and User's Guide (if applicable)
Attachment D, Sample Collateral Agreement (if applicable)
Any agreements (including those not directly referenced in this RFP) which will be required to be executed under the contract (if applicable)
Samples of major screens or web access for automated cash management (if applicable)
Sample daily balancing report for Remote Deposit (if applicable)
Sample account reconciliation reports (if applicable)

Optional Acknowledgements [insert as required by District preference]

The Depository confirms that interest earned will not be charged on the account analysis.

If awarded the contract, the Depository will be required to review the then-current District Investment Policy and certify in writing to that review in accordance with the Public Funds Investment Act certifying that the Depository has sufficient controls in place to avoid transactions not authorized by the Policy.

The Depository accepts the investment options and/or collateral conditions as specified in the District's Investment Policy.

By virtue of the bid submission, the Proposer acknowledges agreement with and acceptance of all provisions of the specifications except as expressly qualified in the bid.

Firm: _____

Address: _____

City/State/Zip: _____

Phone No: _____

Fax No: _____

Email Address: _____

Typed Name: _____

Date: _____

PROPOSAL FORM

**FOR
DEPOSITORY SERVICES**

BY

INDEPENDENT SCHOOL DISTRICT

All questions in this form should be answered and provided to the District as the Depository's proposal.

The District reserves the right to reject any and/or all proposals and if any portion or provision of this proposal and/or any contract between Depository and District entered into is invalid, the remainder at the option of the District shall remain in full force and effect and not be affected.

BANK COMPENSATION

Does the District have the option to pay for Depository services by targeted balances or by fees? Please describe any differences in related costs to the District with either option. If the District chooses one option for the life of the contract, is there a difference in service fees?

Target Balance Compensation Basis:

The District may choose to pay for Depository services on a compensating balance basis, maintaining a targeted amount of its funds in the Depository. The District will maintain balances in the checking accounts to compensate the Depository in full or in part for services provided. Earnings credit for these balances shall be reflected on the monthly account analysis provided to the District.

Any excess collected balance may be invested daily by the Bank as directed by the District, in a District approved overnight investment, an interest bearing account, or an SEC registered money market mutual fund. The overnight investment and any index upon which the rate will be based should be listed below.

The rate history at the Depository for the months beginning MM/YY and ending MM/YY was:

ECR Rate:	_____ %
Interest Bearing Accounts:	_____ %
Money Market Accounts:	_____ %
Sweep Accounts:	_____ %

[Alternatively, the District may have the Depository complete the information by month according to Attachment A, Bank Historical Information.]

If any of these rates is based on an index rate (such as the T-Bill auction rate) stipulate the index calculation basis.

Fee Basis Compensation:

The District may choose to pay for Depository services on a straight fee basis in which no targeted balance will be maintained by the District. Fees will be assessed and paid in accordance with the Depository's proposed fees as listed on Attachment A.

DISTRICT INVESTMENTS

The District reserves the right to purchase, sell and invest its funds and funds under its control, including bond funds, as authorized by the Government Code, Chapter 2256, Public Funds Investment Act, and in compliance with the District's Investment Policy, a copy of which is attached as Attachment C [or alternatively, provide the link to the investment policy on the District's web site].

[District chooses to insert language of Option A or Option B]

Option A

The District may choose to invest in time deposits at the Depository, but all investments including CDs are bid competitively at the time of purchase.

Option B

The District may choose to invest in time deposits at the Depository. The Depository will pay interest on funds of the District placed in time deposits with maturities chosen by the District. The interest rate spread on such deposits should be indicated as above, below or equal to the "asked" yield on the comparable maturity T-Bill of the proposed time deposit being purchased as reported in an independent, financial source.

Single Maturity Time Deposits of more than \$100,000:

MATURITY

Basis point spread over(+)/under(-)

T-Bill "asked" yield [District-specified rate]

7 -- 29 Days

30 -- 59 Days

60 -- 89 Days

90 -- 179 Days

180 -- 364 Days

365 Days or More

COLLATERALIZATION

The Depository must provide either corporate surety bonds or pledged securities as per Texas Education Code §45.201. Please specify which method the Depository will use for collateralization of District funds.

Collateral Conditions

The Depository shall provide collateral equal to 102% of all District time and demand deposits plus accrued interest minus applicable FDIC coverage. Collateral will be pledged to the District and held in an independent safekeeping institution by a custodian or permitted institution as specified by the

Public Funds Collateral Act (Texas Government Code, Chapter 2257). [Alternatively, the District may specify any limitations on its preferred custodial arrangement.] The Depository will be liable for monitoring and maintaining the collateral and the required margin at all times and will provide original safekeeping notice and a monthly report of the collateral to include the security description, par amount, cusip, and market value, at a minimum.

The Depository and District shall execute a collateral agreement in accordance with FIRREA. A sample Collateral Agreement should be attached as Attachment D.

The District estimates its maximum anticipated collateral requirement to be \$_____.

[If voluntary collateral pooling is legislated during the period of this contract, the District may consider and agree to its use under this contract with mutual agreement of the Depository.]

Eligible Collateral

The District will accept only approved securities as specified by Texas Education Code §45.201 as pledged collateral.

[Alternatively, the District may require specific collateral in accordance with its Investment Policy. A reference to the District's Investment Policy would be included in that case. In that case, the following paragraph would be used instead:

The District will accept only the following as pledged collateral in accordance with its Investment Policy attached as Attachment C:

list items here]

BANKING SERVICES FEES

Based on the Depository services required by the District, the Depository shall complete the proposed fee schedule, Attachment A.

DEPOSITORY INFORMATION

Please answer the following questions concerning the Depository.

1. State full name and address of the Depository and any parent holding company. List all branch locations within the District's boundary.
2. Provide the UPBR reference or annual audited financial statement for the most current fiscal year. This may be in printed form, but an electronic link to the web site(s) is preferable. Members of Depository holding companies must include corporate annual financial statements and the individual Depository's call report for the most recent operating quarter.
3. State the Depository's rating from an independent Depository rating agency or, if not available, the rating on the Depository's senior and subordinate debt. Any change in this rating during the period of the contract must be communicated to the District in a reasonable period of time.
4. Contact Information
To insure smooth contract implementation and continuation of services, a specific account executive and a back-up must be assigned to the District account to coordinate services and expedite the solution of any problem encountered.

- a. Designate a Depository officer as a primary contact with the District.

Name _____
Title _____
Telephone # _____
Fax # _____
E-Mail _____

- b. Designate a Depository representative as a backup contact with the District.

Name _____
Title _____
Telephone # _____
Fax # _____
E-Mail _____

- c. In the event the primary and backup contacts aren't available, what is the District's procedure for an emergency contact? After hours?
- d. Describe in detail how the Depository handles problem resolution, customer service, day-to-day contact, and ongoing maintenance for governmental clients. Please be specific about exactly whom the District will be calling and working with for the above described situations.

5. List references from at least three of the Depository's current, comparable governmental clients. Include the length of time under contract, a client contact, title, and telephone number.

6. Based on the services required by the District, please provide a proposed timeline for implementation of the contract including the timeline activities and direct responsibilities of the District and the Depository during implementation.
7. Provide a copy of all agreements (including those not directly referenced in this RFP) which will be required to be executed under the contract.
8. The Depository awarded the contract will be required to review the then-current District Investment Policy and certify in writing to that review in accordance with the Public Funds Investment Act certifying that the Depository has sufficient controls in place to avoid transactions not authorized by the Policy. [Specify one: The District has attached its investment policy to this RFP notice *or* The District has provided a link to the investment policy on the District's web site.]
9. A pre-award interview may be conducted on site at the Depository prior to contract award. Please provide the District with a contact name for arranging the pre-award interview.
10. Is the Depository offering any transition or retention incentive to the District? If so, please describe in detail.

BANKING SERVICES**1. Consolidated Account Structure with Sweep Mechanism**

The District is interested in earning at then-current interest rates available at all times. The District wants the option to use an automated, daily sweep to a money market mutual fund or Depository alternative account (if competitive) to reach its full investment goal. [District option: A repurchase agreement is not acceptable as a sweep investment vehicle.]

The District's current account structure is listed as Attachment B. The District does not guarantee that the balances will be maintained at these same levels.

The Depository shall clearly describe the Depository's most cost effective account structure (interest bearing accounts, ZBA accounts, or sweep, etc.).

- a. Fully describe the proposed account structure. Would a sweep be from a master account with ZBAs or directly swept from the individual accounts. Is interest distributed at the account level?
- b. State the average interest rate on the recommended alternative structure for the past twelve months.
- c. If an SEC registered money market fund is utilized for the sweep proposal, provide the full name and a copy of the prospectus.
- d. Interest earned on interest bearing accounts shall not be charged as an expense on the account analysis. Confirm acceptance of this condition.

The District may be required or may desire to open additional accounts, close accounts, or change account types during the contract period. If this occurs, the new accounts and services shall be charged at the same contracted amount or, if unanticipated, at not more than published rates.

2. Automated Cash Management Information

The District is interested in automated balance and detail information. Minimum automated services shall include [specify District requirements]:

- prior day summary and detail balance reporting on all accounts
 - intra-day detail and summary balances (on local main and payroll accounts)
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 - positive pay exception transactions
 - initiation and monitoring of internal and wire transfers
 - image access
 - controlled disbursement presentment totals
- a. Fully describe the Depository's on-line service. List the system capabilities (i.e. balance reporting, wires, positive pay, stop pay, etc.).
 - b. What is the Depository's back-up process to provide balance reporting and transactions in case of system non-availability?
 - c. When is daily balance information available?
 - d. Submit samples of major screens available or provide web link access to a demonstration module.
 - e. How are individual security sign-ons assigned and who maintains the security module? How many levels of security are available?
 - f. With regard to controlled disbursements—
 - What is the cutoff time for disbursements?
 - What Federal Reserve location do these accounts clear through?
 - How does the District have access to this information?

3. Deposit Services

Standard commercial deposit services are required for all accounts.

The District expects all deposited checks to clear based on the Depository's current published availability schedule, but any expedited availability options should be noted in the proposal. All cleared deposits received by the Depository's established deadline must be processed for same day ledger credit. Failure to credit District accounts in a timely fashion will require interest payment reimbursement to the District at the then-current effective Fed Funds rate.

- a. What is the Depository's daily cut-off time to assure same day ledger credit?
- b. Describe how and when credit/debit advices are sent to the District?
- c. What type deposit bags are used/required? Are these available from the Depository?
- d. In what city does item processing occur?

Remote Deposit

The District is interested in establishing remote check deposit for a few high volume locations during the contract period. These deposits include both consumer and commercial checks.

- e. What are the Depository's current capabilities in remote check deposit? Describe how checks are processed and cleared. Please state the cut-off time for same-day ledger credit.
- f. Give two comparable references with contact information.
- g. Is a daily balancing report produced? Provide a sample.
- h. What scanner equipment is required to operate the system? Is this equipment available through the Depository on a purchase or lease basis? Please list the equipment required along with its cost.

4. Standard Disbursing Services

The District is interested in positive pay services for designated accounts.

- a. Does the Depository image all checks and deposits?
- b. Are check and deposit images available on-line? When? Is a CD provided monthly? If not, are reports downloadable?
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- a. Describe the data transmission/transfer requirements for automated and manual checks.
- b. Is input available online for manual checks? If not on-line, how is information on individual manual checks transmitted to the Depository?
- c. How can check records be changed or deleted by the District, if necessary?
- d. How is the District to be notified of a positive pay exception?
- e. At what time is exception information reported to the District? At what time is the deadline for District exception elections? Are images of exceptions available?
- f. Are all checks, including those received by the tellers and vault, verified against the positive pay file before processing? How often is teller information updated?
- g. Does the Depository offer payroll positive pay?
- h. Please provide a copy of the Depository's file layout format.

6. Account Reconciliation

The District anticipates use of partial or full reconciliation services on all accounts in concert with positive pay, dependent upon cost effectiveness.

- a. Describe the partial and full reconciliation processes.
- b. With what format(s) does the Depository's system interface? What record formats are required? [As an alternative, the District can specify its interface format for the Depository to determine compatibility.] How is reconciled data sent to the District? When?
- c. Specify all reporting alternatives.
- d. Are reports available online? How long are reports maintained online? Provide a sample copy of reports.

7. Funds Transfer and Wire Services

Incoming wire transfers must receive immediate same day collected credit. Wire initiation should be available online. The District requires that wires be released the same business day if information is provided by the established deadline.

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- e. What is the deadline for initiation
 - by telephone?
 - on-line?
- f. Are templates available for repetitive transfers?

8. Optical Imaging

The District desires optical images which are downloadable or on CD on all accounts.

- a. What items and reports are available on-line (checks, statements, deposit slips, deposited items, etc.)?
- b. What items are captured on the monthly CD, if provided?
- c. When are the monthly CD or imaged reports available?
- d. When and how long are statements and account analyses available on-line?

9. ACH Services

The District expects to move toward more ACH transactions for payable and receivable transactions. The District requires a pre-notification (pre-note) on all new transactions.

- a. Describe the transmission alternatives for individual ACH transactions. Is the District able to initiate individual ACH transactions on line?
- b. What filters and blocks are available on District accounts for ACH transactions?
- c. Are ACH addenda shown in their entirety on-line and on reports?
- d. What is the Depository's policy on pre-notification? Is the pre-note charged as a standard ACH transaction?
- e. What is the deadline for transmission (hour and day) for a payroll to credit employee accounts on a Friday?

10. Investments and Safekeeping Services

The Depository will be required to provide book-entry safekeeping services for any securities owned by the District. All District investments will be made by the District and instructions for clearing and safekeeping will be transmitted to the Depository in writing.

All securities must be cleared on a **delivery versus payment (DVP)** basis and ownership documented by original clearing confirmations and safe-keeping receipts provided within one business day of the transaction. Funds for investments will be drawn from a designated District DDA account. All P&I payments, coupon payments, and maturities must receive automated same day collected credit on the District designated account without requiring any additional District action.

If the Depository is not a member of the Federal Reserve or a federal home loan bank and utilizes a correspondent bank for safekeeping of District securities, the transactions will be handled through the Depository's systems and shall not require additional interaction by the District with the correspondent bank. No delay in transactions, wires or flow of funds will be acceptable under a correspondent relationship.

- a. Is the Depository a member of the Federal Reserve or a federal home loan bank? If not, name the correspondent Depository to be used for clearing and safekeeping. Describe any safekeeping arrangement proposed with a correspondent Depository including processing requirements by the District.
- b. Are security transactions available on-line for either origination or monitoring?
- c. What is the deadline for settlement instructions on a cash (same day) settlement? Is there any charge incurred for late instructions?

The District may choose to purchase time deposits from the Depository, but all time deposits will be competitively bid at the time of purchase.

11. Collateral Requirements

All the requirements, including those beyond the Public Funds Collateral Act, as stated in the District's Investment Policy and below, must be met by the Depository. The proposal must state agreement to the following terms and conditions.

- All collateral pledged to the District must be held by a custodian or permitted institution as specified by the Public Funds Collateral Act (Texas Government Code, Chapter 2257) [Alternatively, the District may specify any limitations on its preferred custodial arrangement per its Investment Policy.]
- A tri-party safekeeping agreement shall be executed between the District, the Depository, and the safekeeping bank for custody of pledged securities in full compliance with FIRREA requiring a Depository resolution. (Or completion of Circular 7 if the Federal Reserve is acting as custodian. Use of the FRB will still require a depository agreement be executed between the District and the Depository.)
- All time and demand deposits above FDIC coverage shall be collateralized at a minimum of 102% of principal plus accrued interest at all times (110% on mortgage backed securities.)
- The Depository shall be contractually liable for the continuous monitoring and maintaining of collateral at the District's required margin levels.
- Pledged collateral shall be evidenced by original safekeeping receipts/report sent directly to the District by the custodian within one business day of receipt.
- The District shall receive a monthly report of collateral pledged including description, par, market value and cusip, at a minimum.

- Substitution rights shall be granted if the Depository obtains the District's prior approval and if substituting securities are received before previously pledged securities are removed from safekeeping.

Authorized collateral includes only approved securities as specified by Texas Education Code §45.201. [Alternatively, the District may specify any limitations on its preferred collateral requirements as stated in its Investment Policy.]

- a. Does the Depository propose any collateral charges? If so, under what conditions are they charged and how is the charge applied?
- b. What is the Depository's deadline for requesting collateral in excess of existing requirements?

12. Account Analysis

Monthly account analysis reports should be provided for each account and on a consolidated account basis.

- a. When is the analysis available each month?
- b. Is the account analysis available online? Is it imaged monthly?
- c. Are paper statements also sent to the District? If so, when?
- d. How long will it take the Depository to correct any billing errors on account analysis?

13. Monthly Statements

The Depository must provide monthly account statements on all accounts with complete supporting documentation.

- a. State when monthly statements will be available each month.
- b. Is the monthly statement available online? If so, when and how long? Are the statements imaged or on a CD?
- c. If imaged, are paper statements also sent to the District? If so, when?

14. Overdrafts

- a. Are all accounts aggregated for overdraft calculation purposes?
- b. State the rate basis for intra-day and inter-day overdrafts.
- c. What is the policy for daylight overdrafts?

15. Stop Payments

An automated stop pay process is desired.

- a. What are the time period options available for stop pays?
- b. What are the time period options for extended stop pay periods? How is it extended?
- c. What is the cut-off hour for same day action on stop pays?
- d. Can stop pay orders be initiated on-line? If so, is there any paper follow-up document required?
- e. What information on current and expiring stop pays is available on-line?

16. Customer Service

Does the Depository offer customer services in languages other than English? What languages are offered?

17. Service Enhancements

Based on the information provided in the RFP and your firm's knowledge of the public sector, please describe any services or technological enhancements, not previously mentioned, that should be considered for further improving the effectiveness of the District's treasury management operations.

OPTIONAL SERVICES**1. NSF Checks Represented as ACH (RCK)**

The District may want the option of the second presentment to be made by ACH to targeted dates for maximum collection potential.

- a. Is the Depository currently using ACH for collection of NSF checks? How long has the Depository been providing this service? Provide two comparable references with contact information.
- b. How are the NSF and the later ACH matched/reconciled? Does the Depository system cross reference the two transactions in any way?
- c. Is the NSF information, image, or occurrence available on-line? When and how? How long is it available online?
- d. Can the District specify any target pay day(s)?

2. Merchant Services.

The District currently accepts Visa/MasterCard/American Express/Discover/debit card payments approximating \$_____ in collections a month with an average ticket size of \$_____. There are _____(specify number) locations with _____(specify number) terminals. [Alternatively: The District is interested in possibly accepting credit card payments for various activities.] The service should include daily capture, transmission and authorization of payments at point-of-sale and on the web. Reporting would be required by location.

The District can and does comply with PCI Standards. [Insert this statement if District is capable.]

- a. Does the Depository currently offer merchant card processing services? How long has this service been available? What interface format(s) does the Depository's system supply?
- b. How many institutions and end customers do you have?
- c. Describe the fee components of a merchant card processing relationship. Provide a list of all the fees to the District. State the association fees, discount rates, and the Depository's fee per transaction.
- d. Does the Depository have software available for implementation which allows on-line payments to the District through the Depository's portal?
- e. Describe the reporting functions and data availability.
- f. Detail billing options.
- g. Describe the authorization method/process used. How are incorrect authorizations reversed?
- h. Describe your debit card processing capabilities. Do you identify between debit and credit cards on BIN number? Can you program a debit card to the lowest cost network?
- i. Describe your transmission process. Describe the monitoring and notification process if transmissions fail.
- j. Is data imaging available on line? What is available online? When? For how long?
- k. Describe the dispute resolution process.
- l. Describe your security measures for internet transactions and unauthorized use.

3. Payroll Cards/Debit Cards

The District is exploring the use of stored value cards (payroll card/debit card) as a payroll option for employees at a minimum. Card holders should have the ability to use the cards for purchases at point of sale as a debit card as well as cash withdrawals at financial institutions and ATMs.

The purchasing ability of the cards must be limited to the stored value of the card. The District may choose to not pay for access fees for the employees issued the stored value cards.

The District will be responsible for any marketing of the program and has total discretion on the distribution of the cards. The District will enroll the employees. The Depository is required to provide card holders with all processing and transaction information and reports. Services expected from the Depository would include, at a minimum:

- embossing, encoding and distributing standard cards as directed by District
 - provision of paper/electronic statements to cardholders
 - administration of accounts to include maintenance of accounts, application of funds, authorization of transactions, related tracking
 - customer service functions
- a. Does the Depository currently provide this service? If so, how long has it been available?
 - b. How many institutions and end customers use the service? Provide three comparable references for the service.
 - c. Which program (authorization marks) does your program use? (Visa, MC, etc.)
 - d. Describe the enrollment process. Is enrollment batched and web-based?
 - e. Describe the manner by which funds will be made available to the card-holders.
 - f. What are the inactivity levels for the program? Do these generate additional fees? Describe any other potential fees.
 - g. Are all funding transmissions by standard ACH? Describe the data transmission requirements and deadlines.

4. Purchasing Cards

The District may consider a purchasing card program during the contract period. Cards would be assigned to District employees for defined use.

- a. What card platforms does the Depository support (MC, Visa)? Is a third party processor used?
- b. What, if any, information is available on-line? When? Describe data download and integration capabilities. Describe reporting capabilities
- c. What client support is available? How is it provided?
- d. Describe the diverse parameters and restrictions available for the card control. How many access levels are available?
- e. Discuss settlement and corporate liability terms. Include information on Depository support for the program, the Depository's experience, settlement terms on payment, security procedures, and license requirements. How will billing be received?
- f. Describe how cards are issued, deleted or replaced. How are lost/stolen cards handled?
- g. Provide three comparable references for the service.

5. Company Bank Program

The District is interested in giving its employees the opportunity for enhanced, personal banking services.

- a. Does the Depository have a banking program available for District employees?
- b. List services provided under this program with applicable discounts or fees to the District or employee.
- c. Is availability of the program based on use of direct deposit or District employment?

List of schedules/attachments provided by District:

Copy of District audited financial statements [or link to web site]
Attachment A, Volumes for Pricing Transactions (filled in with volumes)
Attachment B, District's Current Account Structure
Attachment C, District Investment Policy [or link to web site]

List of schedules/attachments to be provided by Depository:

The following information must be included with the proposal:

Copy of Depository audited financial statements [or link to web site]
Corporate audited financial statements and the individual Depository's call report (for members of Depository holding companies) [or link to web site]
UPBR reference
Attachment A, Volumes for Pricing Transactions (filled in with rates)
Sample Account Analysis Statement and User's Guide (if applicable)
Attachment D, Sample Collateral Agreement (if applicable)
Any agreements (including those not directly referenced in this RFP) which will be required to be executed under the contract (if applicable)
Samples of major screens or web access for automated cash management (if applicable)
Sample daily balancing report for Remote Deposit (if applicable)
Sample account reconciliation reports (if applicable)

Optional Acknowledgements [insert as required by District preference]

The Depository confirms that interest earned will not be charged on the account analysis.

If awarded the contract, the Depository will be required to review the then-current District Investment Policy and certify in writing to that review in accordance with the Public Funds Investment Act certifying that the Depository has sufficient controls in place to avoid transactions not authorized by the Policy.

The Depository accepts the investment options and/or collateral conditions as specified in the District's Investment Policy.

By virtue of the proposal submission, the Proposer acknowledges agreement with and acceptance of all provisions of the specifications except as expressly qualified in the proposal.

Firm: _____

Address: _____

City/State/Zip: _____

Phone No: _____

Fax No: _____

Email Address: _____

Typed Name: _____

Date: _____

**DEPOSITORY CONTRACT FOR FUNDS
OF INDEPENDENT SCHOOL DISTRICTS
UNDER TEXAS EDUCATION CODE, CHAPTER 45, SUBCHAPTER G,
SCHOOL DISTRICT DEPOSITORIES**

STATE OF TEXAS

COUNTY OF _____

County-District Number

ARTICLE I. _____, hereinafter referred to as the "Depository," located at
Name of Depository Bank

_____, County, State of Texas, being a bank as that term is defined in
Bank Mailing Address, City, Zip Code *Name of County*

section 45.201 of the Texas Education Code, hereinafter referred to as "the Code", was duly selected in accordance with Chapter 45, Subchapter G of the Code, by the Board of Trustees of the _____ Independent School District located in
Name of District

_____, County, Texas, hereinafter referred to as the "District," to serve as the Depository (or in the event of tie
Name of County

bids/proposals as defined in the Code, as one of the Depositories) of the school funds of the District, except those school funds permitted by law to be deposited or invested otherwise at the sole discretion of the Board of Trustees of the District. The action of the Board of Trustees of the District was duly taken and the Depository is to serve pursuant to this contract for a period of two years and until its successor is selected and has qualified for the fiscal year beginning _____ and ending _____, unless sooner terminated by
Date *Date*

Depository's failure to adhere to all requirements of the Code and of this contract. Said action was a result of bids/proposals opened on _____, Depository's being the best, or equal to the best, bid/proposal selected
Date

from _____ bids/proposals submitted to the District.
number submitted

ARTICLE II. Such selection by the District was made on the basis of a written bid/proposal tendered by Depository substantially in the form prescribed by State Board of Education rule, a copy of which bid/proposal is attached hereto and made a part hereof by reference. This contract is subject to the Code and any amendments thereto and to any and all acts of the Texas legislature which affect public monies held by the District during the term of this contract.

ARTICLE III. The Depository has elected a method to adequately protect the funds of the District deposited with the Depository in accordance with Section 45.208 of the Code, a copy of which election is attached hereto and made a part hereof by reference.

ARTICLE IV.

- A. Section 45.205 of the Code requires that this contract and any extension of this contract coincide with the District's fiscal year. In the event the District changes fiscal year in accordance with Section 44.0011 of the Code, the term of the contract may be shortened or extended no more than one year by agreement of the parties to coincide with the end of the new fiscal year, provided that this contract is to remain in effect until its successor is selected and has qualified. If the parties cannot agree, the District may at its option change the term of this contract to coincide with the end of a new fiscal year closest to its original expiration date.
- B. The District and the Depository may agree to extend this contract for two additional two-year terms in accordance with Section 45.205 of the Code. An extension under this subsection is not subject to the requirements of Section 45.206 of the code.
- C. This contract and/or any additional two-year extension of this contract and the bid/proposal attached hereto shall become binding upon the District and the Depository only upon acceptance by the Texas Education Agency.
- D. The District shall be allowed by the Depository to purchase time deposits which mature after the ending date of the depository contract; however, the Depository may apply new interest rates to the time deposits after the ending date of this contract. The District shall be entitled to withdraw these time deposits without penalty at the expiration of the depository contract, but in that event, the Depository shall only be obligated to pay interest rates comparable to rates offered in the contract for the term the time deposits were actually held; provided, however, that the Depository may impose an early withdrawal penalty on a time deposit withdrawn within 6 days of creation of the deposit, to the extent required to comply with federal regulations defining time deposits.
- E. Venue for any litigation arising from a contractual dispute between a Depository and the District shall be in the county in which the District has its central office, provided that this venue designation shall not be deemed a waiver of any immunity which either party hereto may be entitled to claim.

ARTICLE V. This contract is executed by the District and the Depository in three copies, all of which shall be deemed originals.

TO BE COMPLETED BY ISD AND VERIFIED BY BANK (For all funds received from the Texas Education Agency)											
<table border="1" style="margin: 0 auto; border-collapse: collapse;"> <tr> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> </tr> </table> <p style="margin-top: 5px;">Routing Transit Number (Must be 9 digits)</p>											<p>Type of Account:</p> <p>(Check One)</p> <p>_____ Checking (22)</p> <p>_____ Savings (32)</p> <p style="text-align: right; margin-top: 10px;">Account Number (Up to 13 digits)</p>

☐ Check here if funds are currently sent to an investment pool and no change is required in TEA routing of funds.

Please note that the account information above must agree to the current direct deposit information on file with the Texas Education Agency, Accounting Division. If the District is making changes to the current direct deposit information, a Vendor Direct Deposit Authorization form must be submitted along with the depository contract.

AGREED AND ACCEPTED on behalf of District this the _____ day of _____,

Signature of President of School Board

AGREED AND ACCEPTED on behalf of Depository this the _____ day of _____,

Typed Name of Depository

Signature of Authorized Officer

Title of Authorized Officer

Acknowledgment

STATE OF TEXAS

COUNTY OF _____

Before me, the undersigned authority in and for said county and state, on this day personally appeared _____

Bank Officer

known to me to be the person whose name is subscribed to the foregoing instrument on behalf of the Depository named therein, and known to me to be an officer authorized to execute the foregoing instrument on behalf of said depository, and acknowledged to me that (s)he executed the same as the act and deed of said Depository, for the purpose therein expressed and in the capacity therein stated.

Given under my hand and seal of office this the _____ day of _____,

Signature of Notary

(SEAL)

Notary Public in and for _____

County, Texas

ACCEPTED AND FILED AT TEXAS EDUCATION AGENCY, AUSTIN, TEXAS

_____, 20____
Date Signature Division of Financial Audits

**ELECTION OF COLLATERAL METHOD FOR FUNDS
OF INDEPENDENT SCHOOL DISTRICTS
UNDER TEXAS EDUCATION CODE, CHAPTER 45, SUBCHAPTER G,
SCHOOL DISTRICT DEPOSITORIES**

In accordance with Article III of the Depository Contract for funds, the Depository has elected to use the following method(s) to protect the funds of the District:

- _____ Surety bond (Section 45.208(b) of the Code)
- _____ Deposit or pledge securities (Section 45.208(g) of the Code)

- A. If the Depository elected to file with the District a corporate surety bond in an initial amount equal to the estimated highest daily balance of the District funds determined by the Board of Trustees of the District to be on deposit with Depository during the term of this Depository Contract, then a fully executed copy of such corporate surety bond in the amount of \$_____ in the form and with the content prescribed by State Board of Education rule is attached hereto and made a part hereof by reference; provided further, that:
- (1) the initial amount of the corporate surety bond may rise or fall from day to day so long as all deposits of District are fully and wholly protected;
 - (2) the bond is made payable to the school district and is signed by the depository bank and the surety company authorized to do business in this state;
 - (3) the bond and the surety on the bond are approved by the board of trustees of the school district; and
 - (4) the bond is conditioned on:
 - (a) the faithful performance of all duties and obligations devolving by law on the depository;
 - (b) the payment on presentation of all checks or drafts on order of the board of trustees of the school district, in accordance with its orders entered by the board of trustees according to law;
 - (c) the payment on demand of any demand deposit in the depository;
 - (d) the payment, after the expiration of the period of notice required, of any time deposit in the depository;
 - (e) the faithful keeping of school funds by the depository and the accounting for the funds according to law; and
 - (f) the faithful paying over to the successor depository all balances remaining in the accounts.
 - (5) a premium on the depository bond may not be paid out of school district funds.
- B. If the Depository did not elect to make the corporate surety bond in the amount and as referred to in A, above, then the Depository shall have the option of either depositing or pledging with the District, or with a trustee designated by the District, approved securities as defined in section 45.201 of the Code, in an amount at market value sufficient to adequately protect the funds of the District on deposit with Depository from day to day during the term of this contract, provided that:
- (1) the pledged securities shall be approved securities and authorized by law and shall be in a total market value sufficient to adequately protect the funds of the District on deposit as directed at anytime by the District in accordance with standards acceptable to the Texas Education Agency;
 - (2) the pledge of approved securities shall be waived only to the extent of the exact dollar amount of Federal Deposit Insurance Corporation insurance protection for the funds of the District on deposit with the depository from day to day, and in the event of any termination of such insurance protection this contract shall immediately become void except as provided in (4) hereinafter;
 - (3) the conditions of the pledge of approved securities required by this contract are that the Depository shall credit the account(s) of the District with the full amount of all State of Texas Warrants presented to the Depository for the account of the District no later than the banking day next following the day of the Depository's receipt of such Warrants and for funds transferred electronically the District shall receive credit on the effective settlement date, that the Depository shall faithfully perform all duties and obligations devolving upon the Depository by law and this contract, pay upon presentation all checks or drafts drawn on order of the Board of Trustees of the District in accordance with its orders duly entered according to the laws of Texas, pay upon demand any demand deposit of the District in the Depository, pay any time deposit or certificate of deposit of the District in the Depository upon maturity or after the period of notice required, and faithfully keep, account for as required by law, and faithfully pay over, at maturity or on demand as the District may elect, to any successor depository all balances of funds of the District then on deposit with the Depository;
 - (4) the pledge of approved securities required by this contract shall be a continuing pledge, ceasing only upon the later of the termination of this contract or the fulfillment by the Depository of all of its duties and obligations arising out of this contract, and a continuing security interest in favor of the District shall attach immediately upon any such pledge to all proceeds of sale and to all substitutions, replacements, and exchanges of such securities, and in no event shall such continuing security interest be voided by any act of the Depository; but not withstanding the foregoing the Depository shall have right, with the consent of the District, to purchase and sell, and substitute or replace, any and all of the approved securities pledged pursuant to this contract with other approved securities, provided that all of the other conditions of this contract are adhered to by the Depository, and such pledge shall be in addition to all other remedies available in law to the District;
 - (5) the Depository shall immediately furnish or cause to be furnished to the District original and valid safekeeping or trust receipts issued by the custodian holding the approved securities pledged pursuant to this contract, marked by the custodian on their face to show the pledge and market value as required above, and Depository shall upon request of District provide description of securities being pledged and evidence that securities are legally acceptable in accordance with (1) above;
 - (6) the District may examine and verify at any reasonable time a pledged investment security or a record a custodian maintains in accordance with Gov. Code 2257.061. The District or its agent may inspect at any time an investment security evidenced by trust receipt.
 - (7) upon any closing or failure of Depository, or any event deemed by a state or federal regulatory agency to constitute a closing or failure of Depository, title to all securities pledged pursuant to this depository contract shall be deemed to be vested in, and to be held by the District; and the District is hereby empowered to take immediate possession of and to sell any and all such pledged securities, whether in safekeeping at another bank or in possession of the District or the Depository, and the District is specifically so empowered by execution of this contract.

- (8) the collateral pledge agreement shall conform to the United States Code Annotated (USCA), Title 12, §1823(e), so to defeat the claim of the Federal Deposit Insurance Corporation, its successor, or any other receiver to the securities, and be:
 1. In writing.
 2. Executed by the Depository contemporaneously with the acquisition of the asset.
 3. Approved by the Depository's Board of Directors or Loan Committee which approval shall be reflected in the Board's or Committee's minutes; and
 4. Maintained continuously from the date of its execution as an official record of the Depository.

Copies of the Depository's Board of Directors or Loan Committees minutes shall be furnished to the District.
- C. If the Depository elects to give both a corporate surety bond and to pledge approved securities, such corporate surety bond and pledged approved securities shall be in an aggregate amount which, together with applicable Federal Deposit Insurance Corporation insurance, shall adequately protect the total amount of District funds on deposit with Depository from day to day. The provisions of A, above, permitting the amount of the corporate surety bond to rise or fall from day to day, and all of the provisions of B, above, relating to the amount and conditions of pledge of approved securities, including but not limited to substitution and conditions of pledge, shall apply to the election permitted by this paragraph C.
- D. The Depository agrees to cover by corporate surety bond and/or pledge of approved securities an amount that is equal to funds anticipated to be on deposit from day to day which is estimated not to exceed \$_____. The amount of collateral will be calculated in accordance with the Collateral for Public Funds Act.
- E. Subsequent to the beginning date of this contract should the amount of deposit exceed that which is initially covered by corporate surety bond, pledged approved securities, and FDIC insurance, said amount will be increased, and original and valid safekeeping or trust receipts of the additional securities and/or increased corporate surety bond will be provided in accordance with the Code and Texas Education Agency rules.

Electronic Data Interchange Specifications

Record Specifications:

33 TexReg 4726 June 13, 2008 Texas Register

Child	Child Lives With	Specifies the person(s) with whom the child lives. If the makeup of the child's household differs from the options provided, list the principal caretaker.	alphanumeric	4	left-justify, blank fill	158	161	IC-You/Two parents (natural or adoptive) BL-Combination of two parents (natural and step or adoptive and step) FATH-Father (natural, adoptive or step) MOTH-Mother (natural, adoptive or step) GPAR-Grandparent(s) GARD-Grand guardian (non-family) CARE-Caregiver (non-family) FOST-Foster family GROUP-Group home or institution that provides 24 hour care SELF-Child lives alone SPOU-Spouse (child's legal or common-law) FRND-Friend (peer, adult friend, or boyfriend/girlfriend) UNK-Unknown	Required if the Special Education field is "Y", otherwise blank fill.
Child	Special Education?	Has the child been identified as a special education student?	alphanumeric	1		162	162	Y, N, U ED-Severely Disturbed LD-Severely Disabled MR-Mentally Retarded OT-OTIE PD-Physical Disability UN-Unknown Y, N or U	Required if the Special Education field is "Y", otherwise blank fill.
Child	Special Education Handicapping Condition	If the child has been identified as a special education student, specify the primary handicapping condition.	alphanumeric	2	left-justify, blank fill	163	164	AD-Attention Deficit Hyperactivity Disorder BP-Bipolar CD-Conduct Disorder OC-Cognitive Disorder DD-Depressive Disorder DD-Dissociative Disorder DF-Oppositional Defiant Disorder DN-Depression Not Otherwise Specified ED-Eating Disorder GA-Generalized Anxiety IC-Impulse Control Disorder MA-Major Depression MR-Mental Retardation OC-Other Childhood Disorder OC-Other Anxiety Disorder OM-Other Mood Disorder OP-Other Psychotic Disorder OT-Other Disorder PD-Personality Disorder PD-Post-Traumatic Stress Disorder PV-Postive Developmental Disorder SA-Schizoaffective SZ-Schizophrenia UN-Unknown Blank fill if not applicable. Y, N, S (suspected), or U Y, N, S (suspected), or U Y, N, S (suspected), or U Y, N, S (suspected), or U	Required if the Mental Health Needs field is "Y", otherwise blank fill.
Child	Mental Health Needs	Does the child have mental health needs?	alphanumeric	1	left-justify, blank fill	165	165	Y, N or U	Required if the Mental Health Needs field is "Y", otherwise blank fill.
Child	Date Determined Mentally Ill	Date that the child was first determined to have mental health needs (by the department).	numeric	8	YYYYMMDD	166	173	Valid date between 1/1/1900 and 12/31/2099	Required if the Mental Health Needs field is "Y", otherwise blank fill.
Child	In Treatment?	Is the child currently in mental health treatment?	alphanumeric	1		174	174	Y, N, U or blank fill if not applicable.	Required if the Mental Health Needs field is "Y", otherwise blank fill.
Child	Diagnosis	What is the child's primary diagnosed mental health condition?	alphanumeric	2		175	178	AD-Attention Deficit Hyperactivity Disorder BP-Bipolar CD-Conduct Disorder OC-Cognitive Disorder DD-Depressive Disorder DD-Dissociative Disorder DF-Oppositional Defiant Disorder DN-Depression Not Otherwise Specified ED-Eating Disorder GA-Generalized Anxiety IC-Impulse Control Disorder MA-Major Depression MR-Mental Retardation OC-Other Childhood Disorder OC-Other Anxiety Disorder OM-Other Mood Disorder OP-Other Psychotic Disorder OT-Other Disorder PD-Personality Disorder PD-Post-Traumatic Stress Disorder PV-Postive Developmental Disorder SA-Schizoaffective SZ-Schizophrenia UN-Unknown Blank fill if not applicable. Y, N, S (suspected), or U Y, N, S (suspected), or U Y, N, S (suspected), or U Y, N, S (suspected), or U	Required if the Mental Health Needs field is "Y", otherwise blank fill.
Child	Georg Affiliation/Membership	Is the juvenile currently or has the juvenile ever been affiliated with a gang?	alphanumeric	1		177	177	Y, N, S (suspected), or U	
Child	Sexual Abuse?	Has the child ever been a victim of sexual abuse?	alphanumeric	1		178	178	Y, N, S (suspected), or U	
Child	Physical Abuse?	Has the child ever been a victim of physical abuse?	alphanumeric	1		179	179	Y, N, S (suspected), or U	
Child	Emotional Abuse?	Has the child ever been a victim of emotional abuse?	alphanumeric	1		180	180	Y, N, S (suspected), or U	
Child	DPS SID Number	Has the child ever been a victim of emotional abuse?	alphanumeric	8	99999999	181	188	00000000-99999999 or blank fill	
Child	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	30	left-justify, blank fill	189	224	Blank fill	CASEWORKER departments only
Child	End of Record Marker		alphanumeric	1		225	225	Must contain "1"	

Referral	Headquarters County Number	County where department headquarters is located.	numeric	3	999	1	3	001-254	
Referral	Personal ID Number	Unique child identifier.	numeric	7	99999999	4	10	0000001-99999999	
Referral	Referral Number	Unique referral identifier.	numeric	7	99999999	11	17	0000000-99999999	
Referral	Record Type	Record identifier for Referral Record.	alphanumeric	2		18	19	103*	
Referral	Referral Type	Type of referral. Definitions of these categories are available on the TJCPC website.	alphanumeric	2		20	21	FM-Formal PF-Paper Formalized PA-Paper Complaint CS-Courtesy Supervision TR-Interim/Permanent Transfer CD-Contract Denial CP-Contract Placement NJ-Non-Jurisdiction IC-Interstate Compact	Courtesy Supervision (CS) only valid for offenses that occurred prior to September 1, 2005.
Referral	Referral Date	For formal, paper formalized and crisis intervention referral types, the referral date is when face-to-face contact with the child occurs. For paper complaints, it is the date that the department received the complaint. For non-jurisdictional, contract placements and definitions, and interstate compact, it is the date the child was received. For transfers, it is the official supervision start date.	numeric	8	YYYYMMDD	22	29	Valid date between 1/1/1900 and 12/31/2099.	

Referral	County Number	County referring the child. Same as Headquarters County Number unless referred to a multi-county jurisdiction. If Referral Type is Contract Detention, Contract Placement or Non-Jurisdiction, indicate the referring county or use a special identifier (755-759) if applicable.	numeric	3	999	30	32	001-254 755-Other State 756-TYC 757-ANS 758-Other U.S. Government Agency 759-State or Local Government Agency	County specified must be within the department's jurisdiction or special identifier (755-759).
Referral	School Status	School status at time of referral.	alphanumeric	2		33	34	001-Regular School 002-Charter School 003-Home School 004-Alternative Education 005-Juvenile Justice Alternative Education 006-Private School 007-Charter School 008-Private School 009-Unknown	Required for all Formal and Paper Formalized referrals, otherwise blank fill.
Referral	Last Grade Completed	The last grade completed by the child at time of referral.	numeric	2	99	35	36	00-12	Must be non-zero value if School Status is known.
Referral	Substance Abuse	Is the juvenile in need of substance abuse services?	alphanumeric	1		37	37	Y=Yes, not being treated N=No, not being treated Blank fill if no modification	Required for all Formal and Paper Formalized referrals, otherwise blank fill.
Referral	Referral Source	The agency referring the child to the probation department.	alphanumeric	1		38	38	P=Law Enforcement Agency S=School D=Probation Department O=Other T=TYC	
Referral	Primary Alleged Offense	At intake, the most serious offense the child is alleged to have committed.	alphanumeric	8	99999999	39	46	A valid T-JPC-DPS offense code. A current list of codes may be obtained from T-JPC's website or by contacting T-JPC directly.	An Offense Record must exist for this referral with the same offense code and the Alleged Offense Indicator field must contain "P".
Referral	Primary Alleged Offense Preparatory Code	Designates that the Primary Alleged Offense was a preparatory (attempted, conspired or solicited) offense. Reduces offense by one degree.	alphanumeric	1		47	47	A=Attempted C=Conspired S=Solicited Blank fill if no modification	
Referral	Primary Disposition Offense Code	The most serious offense at disposition of the referral.	alphanumeric	8	99999999	48	55	A valid T-JPC-DPS offense code. A current list of codes may be obtained from T-JPC's website or by contacting T-JPC directly.	An Offense Record must exist for this referral with the same offense code and the Disposition Indicator field must contain "P".
Referral	Primary Disposition Offense Preparatory Code	Designates that the Primary Disposition Offense was a preparatory (attempted, conspired or solicited) offense. Reduces offense by one degree.	alphanumeric	1		56	56	A=Attempted C=Conspired S=Solicited Blank fill if no modification	
Referral	Primary Disposition	Department defined code for disposition.	alphanumeric	4	left-justify, blank fill	57	60	Department specified code.	Required if Disposition Date field completed. Record for each code specified.
Referral	Primary Disposition (T-JPC category)	Summarized category of Primary Disposition field as defined by T-JPC. Definitions of these categories are available on the T-JPC website.	numeric	3	999	61	63	Department Actions: 010-Dismissed or Withdrawn 020-Supervisory Caution 030-Deferred Prosecution 040-No Probable Cause/Dismissed 050-Refused 051-Non-Suited 060-Supervisory Caution 070-Deferred Prosecution Court Actions: 080-Dismissed 081-Not Guilty 082-Adjudicated with no Disposition 090-Supervisory Caution 100-Deferred Prosecution 110-Adjudicated to Probation 111-Determinate Sentence Probation 120-Indeterminate Sentence Probation 130-Indeterminate Commitment to TYC 135-Consent to Sentence to TYC 140-Determinate Commitment to TYC 150-Certified as an Adult 210-Consolidated and Disposed in Another Case 990-Transferred with no Disposition Valid date between 1/1/1900 and 12/31/2099. Zero fill if not applicable.	Required if Disposition Date field completed.
Referral	Disposition Date	Date a disposition was assigned to this referral.	numeric	8	YYYYMMDD	64	71		
Referral	Determinate Sentence Months	The total number of months ordered if the child is either committed to the Texas Youth Commission or placed on probation for a determinate sentence.	numeric	3	999	72	74		Required if Primary Disposition (T-JPC category) value equals 111 or 140.

Referral	Overlaid to Where	Designates the type of agency, organization or program (outside of the juvenile justice system) where the child was diverted. Do not complete this field for children who are under supervision, committed to TYC or certified as an adult. Definitions of these categories are available on the TYC website.	alphanumeric	4	left-justify, blank fill	75	78	MHTA-Mental Health Services FCPS-Family/Child Protective Services DAG-Drug & Alcohol Counseling FOP-First Offender Program STAR-STAR Intervention Program TRUP-Transitional Residential Unit Program VICT-Victim Mediation OTHR-Other Blank fill if not applicable.
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The following section provides for two subsequent dispositions. This section is used only for children who violate the terms of their deferred prosecution and are subsequently adjudicated on the same referral, or for dispositions that are appealed and are subsequently assigned a different disposition. It is not used for modifications. See descriptions and edit criteria above.

Referral	Subsequent Primary Disposition (category)	See descriptions above.	alphanumeric	4	left-justify, blank fill	73	82	See edit criteria above.
Referral	Subsequent Primary Disposition Date		numeric	3	999	83	85	See dependences above.
Referral	Subsequent Disposition Date		numeric	3	YYYYMMDD	86	83	
Referral	Subsequent Delinquent Sentence Months		numeric	3	999	84	86	
Referral	Subsequent Diverted to Where		alphanumeric	4	left-justify, blank fill	87	100	
Referral	Subsequent Primary Disposition (category)		alphanumeric	4	left-justify, blank fill	101	104	
Referral	Subsequent Primary Disposition Date		numeric	3	999	105	107	
Referral	Subsequent Delinquent Sentence Months		numeric	3	YYYYMMDD	108	115	See edit criteria above.
Referral	Subsequent Diverted to Where		numeric	3	999	116	118	
Referral	Subsequent Disposition Date		alphanumeric	4	left-justify, blank fill	119	122	

End of subsequent disposition section.

Referral	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	123	158	CASEWORKER departments only
Referral	End of Record Marker		alphanumeric	1		159	159	Must contain 'Y'

Detention	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001-254
Detention	Personal ID Number	Child's Personal ID Number (PID).	numeric	7	9999999	4	10	000001-999999
Detention	Referral Number	Specify the referral for which this secure detention applies.	numeric	7	9999999	11	18	000001-999999
Detention	Record Type	Record identifier for Detention Record.	alphanumeric	2		19	19	DDF
Detention	Detention Sequence Number	Uniquely identifies this detention record from all other detention records for the specified Personal ID Number.	numeric	6	999999	20	25	000001-999999
Detention	Detention Facility	TYPC registered facility identification number for secure detention facilities in Texas or department defined code for facilities outside of Texas.	alphanumeric	7	left-justify, blank fill	26	32	If facility is not in Texas then include a Detention Record for each code specified.
Detention	Date Detained	The date the child was placed in detention.	numeric	8	YYYYMMDD	33	40	Valid date between 1/1/1900 and 12/31/2099.
Detention	Time Detained	The time the child was placed in detention.	numeric	4	HHMM	41	44	HH between 00.23 and MM between 00.59.
Detention	Date Released	The date the child was released from detention.	numeric	8	YYYYMMDD	45	52	Valid date between 1/1/1900 and 12/31/2099 and greater than or equal to the Date Detained. Zero fill if not applicable.
Detention	Time Released	The time the child was released from detention.	numeric	4	HHMM	53	56	HH between 00.23 and MM between 00.59.
Detention	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	57	92	Required if Date Released field completed.
Detention	End of Record Marker		alphanumeric	1		93	93	CASEWORKER departments only

MAYSI	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001-254
MAYSI	Personal ID Number	Child's Personal ID Number (PID).	numeric	7	9999999	4	10	000001-999999
MAYSI	Referral Number	Specify the referral for which this MAYSI screening applies.	numeric	7	9999999	11	17	000001-999999
MAYSI	Record Type	Record identifier for MAYSI Record.	alphanumeric	2		18	19	MA
MAYSI	MAYSI Sequence Number	Uniquely identifies this MAYSI record from all other MAYSI records for the specified Personal ID Number.	numeric	6	999999	20	25	000001-999999
MAYSI	Screening Date	Date the screening instrument was administered to the child for the specified referral. If the MAYSI was not administered, enter the date that the department was last screened. If the child was already in detention or in treatment, enter the referral date.	numeric	8	YYYYMMDD	26	33	Valid date between 1/1/1900 and 12/31/2099.
MAYSI	Administered?	Was the MAYSI-2 administered to the juvenile?	alphanumeric	1		34	34	Y or N
MAYSI	Reason Not Administered	Why was the MAYSI-2 not administered?	alphanumeric	1		35	35	A-Assessed by mental health professional D-Child already in detention at time of referral E-Child is non-English speaking F-Child Released Test G-Child is already in treatment for mental health H-Child is already in custody or mentally unstable I-Other reason Required if Administered value is 'N'. Blank fill if not applicable.
MAYSI	Alcohol/Drug Use (AD) Score	Refer to MAYSI-2 Scoring Summary.	alphanumeric	1		36	36	0-8 or blank fill if not applicable. Required if Administered value is 'Y'.

MAYSI	Anxiety-Inhibits (AI) Score	Refer to MAYSI-2 Scoring Summary.	alphabetic	1		37	37	0.9 or blank fill if not applicable.	Required if Administered value is "Y".
MAYSI	Depressed-Anxious (DA) Score	Refer to MAYSI-2 Scoring Summary.	alphabetic	1		38	38	0.9 or blank fill if not applicable.	Required if Administered value is "Y".
MAYSI	Somatic Complaints (SC) Score	Refer to MAYSI-2 Scoring Summary.	alphabetic	1		39	39	0.9 or blank fill if not applicable.	Required if Administered value is "Y".
MAYSI	Suicide Ideation (SI) Score	Refer to MAYSI-2 Scoring Summary.	alphabetic	1		40	40	0.5 or blank fill if not applicable.	Required if Administered value is "Y".
MAYSI	Thought Disturbance BOYS (TD) Score	Refer to MAYSI-2 Scoring Summary.	alphabetic	1		41	41	0.5 or blank fill if not applicable.	Required if Administered value is "Y" and Sex is "M". If Sex is "F", blank fill.
MAYSI	Traumatic Experiences (TE) Score	Refer to MAYSI-2 Scoring Summary.	alphabetic	1		42	42	0.5 or blank fill if not applicable.	Required if Administered value is "Y".
MAYSI	Referred for Subsequent Assessment?	Was the child referred to a mental health professional for a subsequent assessment based on the MAYSI results?	alphabetic	1		43	43	Y or N	Required if Administered value is "Y".
MAYSI	Referred to Where	If the child was referred for a subsequent assessment, to what type of provider was he/she referred?	alphabetic	1		44	44	C-Contract Provider H-House Staff M-Local MH/Substance Abuse Provider P-Private Provider O-Other	Required if Referred for Subsequent Assessment value is "Y".
MAYSI	Subsequent Assessment?	Did the child receive a subsequent assessment by a mental health professional?	alphabetic	1		45	45	Y, N, U (unknown) or blank fill if not applicable.	Required if Referred for Subsequent Assessment value is "Y".
MAYSI	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphabetic	36	left-justify, blank fill	46	81	Blank fill	CASEWORKER departments only
MAYSI	End of Record Marker		alphabetic	1		82	82	Must contain "I"	

Behavioral Health	Headquarter County Number	County where department headquarters is located.	numeric	3		999	3	001, 254	
Behavioral Health	Personal ID Number	Child's Personal ID Number (PID)	numeric	7		9999999	4	0000001, 9999999	
Behavioral Health	FILLER		numeric	7		9999999	11	Zero fill	
Behavioral Health	Record Type	Record identifier for Behavioral Health Record.	alphabetic	2			18	"B"	
Behavioral Health	Behavioral Health Sequence Number	Uniquely identifies the behavioral health record from all other behavioral health records for the specified Personal ID Number.	numeric	6		999999	20	000001, 999999	Used in conjunction with the PID Number to determine unique record. Once assigned it should not be changed.
Behavioral Health	Referral Date	The date that the child was referred to the mental health or substance abuse provider.	numeric	8	YYYYMMDD		26	Valid date between 1/1/1900 and 12/31/2099.	
Behavioral Health	Presenting Problem	The type of behavioral health service to which the juvenile is being referred.	alphabetic	1			34	M-Mental Health S-Substance Abuse A-Assessment/Evaluation C-Crisis Intervention S-Screening S-Sensor O-Other	
Behavioral Health	Referred For	For what was the child referred?	alphabetic	1			35		
Behavioral Health	Referred To	To what type of provider was the child referred?	alphabetic	1			36	C-Contract Provider H-House Staff M-Local MH/Substance Abuse Provider P-Private Provider O-Other	
Behavioral Health	Referral Outcome	What was the outcome of this referral?	alphabetic	1			37	C-Completed M-Not Completed P-Pending U-Unknown Outcome	
Behavioral Health	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphabetic	36	left-justify, blank fill		38	Blank fill	CASEWORKER departments only
Behavioral Health	End of Record Marker		alphabetic	1			74	Must contain "I"	

Offense	Headquarter County Number	County where department headquarters is located.	numeric	3		999	3	001, 254	
Offense	Personal ID Number	Child's Personal ID Number (PID)	numeric	7		9999999	4	0000001, 9999999	
Offense	FILLER		numeric	7		9999999	11	Zero fill	
Offense	Record Type	Record identifier for Offense Record.	alphabetic	2			18	"O"	
Offense	Unique Offense Number	Uniquely identifies the offense record from all other offense records for the specified Personal ID Number.	numeric	6		999999	20	000001, 999999	Used in conjunction with the PID Number and Referral Number to determine unique offense event. Once assigned it should not be changed.
Offense	Alleged Offense Date	The date the alleged offense occurred.	numeric	8	YYYYMMDD		26	Valid date between 1/1/1900 and 12/31/2099.	
Offense	Alleged Offense Counts	Used to specify multiple occurrences (counts) of the same offense and incident.	numeric	2		99	34	01, 99	
Offense	Alleged Offense Code	Used to designate the DPS offense code for the alleged offense.	alphabetic	8		99999999	36	A valid TJC-DPS offense code. A current list of codes may be obtained from TJC's website or by contacting TJC directly.	
Offense	Alleged Offense Preparatory Code	Used to designate the Alleged Offense was a preparatory offense.	alphabetic	1			44	A-Attempted S-Conspired O-Other Blank fill if no modification	
Offense	Alleged Offense Indicator	Designates the status of the offense at time of intake. An offense may be designated as a primary or secondary offense. However, if during disposition the child is being disposed on an offense not originally listed, enter a new offense and designate it as "added at disposition or revised at disposition".	alphabetic	1			45	P-Primary alleged offense S-Secondary alleged offense R-Revised offense at time of disposition A-Added offense at time of disposition	Only one offense within a referral may be designated as the primary alleged offense.

Offense	Disposition Indicator	Designates the status of the offense at time of disposition.	1	46	46	46	Only one offense within a referral may be designated as the primary disposition offense.
			alphanumeric				C-Primary disposition offense C-Consolidated with primary offense D-Dismissed (not included in the disposition)
Offense	Weapon Used	Specifies the type of weapon used during the commission of the offense.	2	47	48	48	BK-Brass Knuckles CL-Club or other similar device HW-Handgun KN-Knife MA-Mace or other chemical dispensing device RC-Rifle SG-Shotgun ST-Stun Gun OT-Other Blank fill if not applicable.
Offense	School Related Location	Specifies the offense occurred on a school campus or during a school related activity.	4	49	52	52	OCAM-On Campus OTHR-School Related Activity-OffCampus Blank fill if not applicable.
Offense	School Campus Number	Specifies the Texas Education Agency (TEA) assigned campus number where the offense took place. If the offense occurred 'in transit' then use the home campus number. May be obtained from the local campus, school district or Texas Education Agency (TEA).	9	99999999	61	61	Required if School Related Location field is "OCAM". Zero fill if not applicable.
Offense	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	36	Blank fill	97	97	CASEWORKER departments only
Offense	End of Record Marker		1	Blank fill	98	98	Must contain "1"

Placement	Headquarter County Number	County where department headquarters is located	3	001,254	1	3	
Placement	Personal ID Number	Child's Personal ID Number (PID)	7	999999	4	10	000001, 999999
Placement	Referral Number	Specifies the referral for which this placement applies.	7	999999	11	17	000001, 999999
Placement	Record Type	Record identifier for Placement Record.	2		18	19	"PI"
Placement	Placement Sequence Number	Uniquely identifies the placement record from all other placement records for the specified Personal ID Number.	6	999999	20	25	000001, 999999
Placement	Placement Facility	TJPC registered facility identification number or department defined code for placement facility.	7	left-justify, blank fill	26	32	If Placement Type is Secure Correctional (S) then code must be a TJPC registered facility identification code.
Placement	Placement Type	Type of residential placement used.	1		33	33	E-Emergency Shelter F-Foster Care (TFPS) P-Pretrial Placement S-Secure Correctional R-Residential Treatment B-Bootcamp C-Correctional Center CE-Female Offender ME-Mental Health S-Substance Abuse T-Treatment X-Sex Offender O-Other
Placement	Service Type	Description of the primary services delivered at the facility.	1		34	34	Required if Placement Type field is not Emergency Shelter (E).
Placement	Cost Per Day	Specifies per day charge for this placement. Zero specifies a no-cost (free) placement. If the cost per day changes during the placement, create a new record.	5	999.99 (implied decimal)	35	38	\$000.00, \$500.00
Placement	Level of Care	Level of care as defined by the Texas Department of Family Protective Services (FPS). Definitions of these categories are available on the TJPC website.	1		40	40	E-Emergency B-Basic M-Moderate S-Specialized U-Unknown Blank fill if not applicable.
Placement	Placement Date In	The date the child entered the placement facility.	8	YYYYMMDD	41	48	Valid date between 1/1/1900 and 12/31/2099.
Placement	Placement Date Out	The date the child exited the placement facility.	8	YYYYMMDD	49	56	Valid date between 1/1/1900 and 12/31/2099 and greater than or equal to the Placement Date In. Zero fill if not applicable.
Placement	Discharge Reason	Specifies the reason the child left the facility. Definitions of these categories are available on the TJPC website.	1		57	57	S-Completed B-Absent without Permission C-Changed Facilities/Cost Per Day Changed F-Expiration of Findings/Closure J-Transferred out of Jurisdiction U-Unsuitable/Not Eligible X-Failure to Comply
Placement	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	36	left-justify, blank fill	98	93	Required if Placement Date field is completed. If "C" is used a new Placement Record must exist.
Placement	End of Record Marker		1	Blank fill	94	94	CASEWORKER departments only
Program	Headquarter County Number	County where department headquarters is located.	3	001,254	1	3	

Supervision	Supervision End Date	The ending date of the supervision.	numeric	8	YYTMMDD	46	53	Valid date between 1/1/1900 and 12/31/2099 and greater than or equal to the Supervision Begin Date. Zero fill if not applicable	
Supervision	Supervision Outcome	Specifies the supervision outcome. Definitions of these categories are available on the TIPC website.	alphanumeric	1		54	54	A-Transferred to the Adult System B-Absent without Permission C-Deceased D-Entered out of Jurisdiction E-Completed F-Transferred to the Adult System G-Transferred to the Adult System H-Transferred to the Adult System I-Transferred to the Adult System J-Transferred to the Adult System K-Transferred to the Adult System L-Transferred to the Adult System M-Transferred to the Adult System N-Transferred to the Adult System O-Transferred to the Adult System P-Transferred to the Adult System Q-Transferred to the Adult System R-Transferred to the Adult System S-Completed T-Transferred to the Adult System U-Transferred to the Adult System V-Transferred to the Adult System W-Transferred to the Adult System X-Failed to Comply Y-Transferred to the Adult System Z-Transferred to the Adult System	Required if Supervision End Date field completed.
Supervision	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36		55	60	Blank fill	CASEWORKER departments only
Supervision	End of Record Marker		alphanumeric	1	left-justify, blank fill	91	91	Must contain Y	

Delete	Headquarter County Number	County where department headquarters is located.	numeric	3			3	001-254	
Delete	FILLER		alphanumeric	14			17	Blank fill	
Delete	Record Type	Record identifier for Delete Record. A Delete Record should only be used to remove records reported in error. It should not be used to remove sealed or purged records. A request to delete a Child Record will cause all records for the specified PID Number to be removed. A request to delete a Referral Record will cause all records attached to the referral (i.e. detentions, offenses, placements, etc) to be removed. All other delete requests will remove only the requested record.	alphanumeric	2			21	01-Child 02-Referral 03-Detention 04-Offense 05-Placement 06-Program 07-Supervision	
Delete	Delete Record Type		alphanumeric	2		20			
Delete	Delete Personal ID Number	Specifies the personal identification number of the record to be deleted.	numeric	7	9999999	22	26	0000001-9999999	Required for all delete transactions.
Delete	Delete Referral Number	Specifies the referral number of the record to be deleted.	numeric	7	9999999	29	35	0000001-9999999, zero fill if not applicable	Required for all delete transactions except 01-Child and 02-Referral Health.
Delete	Delete Sequence Number	Specifies the sequence number of the record to be deleted.	numeric	6	9999999	36	41	000001-999999, zero fill if not applicable	Required for all delete transactions except 01-Child and 02-Referral Health.
Delete	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	42	77	Blank fill	CASEWORKER departments only
Delete	End of Record Marker		alphanumeric	1	left-justify, blank fill	76	76	Must contain Y	

Trailer	Headquarter County Number	County where department headquarters is located.	numeric	3			3	001-254	
Trailer	FILLER		alphanumeric	14			17	"ZZZZZZZZZZZZZZZZZZZZ"	Must be last record in the file.
Trailer	Record Type	Record identifier for Trailer Record.	alphanumeric	2		19	19	ZZ	
Trailer	Total Record Count	Total number of records contained in the file including the header and trailer.	numeric	8	99999999	20	27		Compared to calculated number of records to ensure complete file was transmitted.
Trailer	End of Record Marker		alphanumeric	1		28	28	Must contain Y	

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Department of Aging and Disability Services

Notice of Public Hearing

The Texas Department of Aging and Disability Services (DADS) will hold a public hearing on June 23, 2008, to accept public testimony regarding the draft Report Update for State Mental Retardation Facilities for Fiscal Years 2008-2009 (Report). This is the second of two public hearings relating to long-range planning at state schools required by Health and Safety Code, §533.032(c). The Department held the first public hearing on February 20, 2008.

The draft Report is posted on the DADS website at the address below:

<http://www.dads.state.tx.us/homepage/stateschoolreport-publichearing.html>

The Department will begin the public hearing on June 23, 2008, at 3:00 p.m. The public hearing will be held in the Winters Building Public Hearing Room at 701 W. 51st Street, Austin, Texas. If you wish to submit written comments in lieu of public testimony, please submit the written comments to DADS by 5:00 p.m. on June 23, 2008. Written comments may be submitted by any of the following methods:

Email

wendy.francik@dads.state.tx.us

United States Mail

Attention: Wendy Francik

Center for Program Coordination, MC 235

Texas Department of Aging and Disability Services

P.O. Box 149030

Austin, Texas 78714-9030

FAX

Attention: Wendy Francik

(512) 438-4392

Contact Leta Bovee at (512) 438-4211 or leta.bovee@dads.state.tx.us to request a hard copy of the draft Report by mail.

Persons with disabilities who plan to attend the public hearing and who will need auxiliary aids or services are asked to call Leta Bovee at (512) 438-4211, at least two business days prior to the meeting so that appropriate arrangements can be made.

TRD-200802865

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Filed: June 3, 2008

Department of Assistive and Rehabilitative Services

Request for Proposal

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), announces the issuance of Request for Proposals (RFP) #538-08-11628. DARS seeks to contract with a firm or individual to perform Medical Rate Analysis Services. DARS requires a consistent payment methodology for application to payments made for hospital services and for payments made to ambulatory surgical centers (ASCs). For the program divisions listed in the solicitation, DARS is interested in establishing a single payment methodology, except in situations where evidence-based business reasons dictate otherwise.

The deadline for questions is June 13, 2008, and the closing date for proposals is July 3, 2008, at 3:00 p.m. The anticipated award date is on or about August 4, 2008. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits HHSC to pay for any costs incurred prior to the award of a contract.

Parties interested in submitting a proposal may obtain information by contacting HHSC Purchaser Lyn Peters at (512) 206-5504. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=76915.

TRD-200802873

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Filed: June 3, 2008

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of May 23, 2008, through May 29, 2008. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on June 4, 2008. The public comment period for this project will close at 5:00 p.m. on July 7, 2008.

FEDERAL AGENCY ACTIONS:

Applicant: Industrial Real Estate Holdings, L.P.; **Location:** The project is located at 14035 Industrial Road, at the Port of Greens Bayou, Houston Ship Channel, in Harris County, Texas. The project can be lo-

cated on the U.S.G.S. quadrangle map entitled: Pasadena, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 290180; Northing: 3292714. The Kinder-Morgan Dredged Material Placement Area (DMPA) is located on the south side of the Houston Ship Channel immediately east of the Sam Houston Parkway (Beltway 8), in Pasadena, Harris County, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 292412; Northing: 320682. Project Description: The applicant proposes to amend Department of the Army (DA) Permit 09776(10) to add 28 feet of bulkhead, a new 96-foot return wall, and to dredge the area to -30 feet. Dredged material will be placed in the previously authorized DMPA. CCC Project No.: 08-0101-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-00574 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Tracey Brent Dean; Location: The project is located approximately 4.8 miles east of Seabrook in State Tract (ST) 218 of Galveston Bay, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Bacliff, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 311,395; Northing: 3,274,477.8. Project Description: The applicant proposes to drill ST 218, Well No. 1, install well and production platforms and lay flowlines. The applicant requests authorization to lay and maintain one of the following up to 6-inch diameter pipelines: Pipeline "A" - from Well #1 approximately 2,529 feet southwest to an existing Davis Petroleum 8-inch pipeline. Pipeline "B" - from Well No. 1 approximately 5,760 feet southeast to an existing Davis Petroleum well in ST 252. Pipeline "C" - from Well No. 1 approximately 11,232 feet to an existing Davis Petroleum platform in ST 251. Only one of the pipelines would be installed. The following sediment displacement would occur during the proposed pipeline construction: (1) Line "A" approximately 1,500 cubic yards; (2) Line "B" approximately 3,400 cubic yards; or (3) Line "C" approximately 6,650 cubic yards. Approximately 1,267 cubic yards of gravel or crushed concrete may be placed for pad construction under the drilling rig. This activity would include installation of typical marine barge and keyway, shell and/or gravel pad, production structure with attendant facilities, and flowlines. CCC Project No.: 08-0149-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-01927 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy the consistency certifications for inspection, may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200802858

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council

Filed: June 3, 2008

◆ ◆ ◆
Comptroller of Public Accounts

Notice of Award

The Comptroller of Public Accounts, State Energy Conservation Office (SECO), announces this notice of award for energy engineering services for the Agricultural Energy Assessment Program to EnSave, Inc., 65 Miller Street, Suite 105, Richmond, Vermont 05477. The total amount of the contract is not to exceed \$300,000.00. The term of the contract is May 30, 2008 through August 31, 2008.

The notice of request for proposals (RFP #182b) was published in the February 1, 2008, issue of the *Texas Register* (33 TexReg 990).

TRD-200802869

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: June 3, 2008

◆ ◆ ◆ Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/09/08 - 06/15/08 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/09/08 - 06/15/08 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005³ for the period of 06/01/08 - 06/30/08 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 06/01/08 - 06/30/08 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment, or other similar purpose.

³For variable rate commercial transactions only.

TRD-200802856

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: June 3, 2008

◆ ◆ ◆ East Texas Council of Governments

Public Notice

The East Texas Council of Governments (ETCOG), as administrative unit for the Workforce Solutions East Texas Board, is soliciting proposals for worker training initiatives with primary companies. The contract period would begin September 1, 2008 and run through June 30, 2009. The Workforce Solutions East Texas Board is making \$50,503 available in this offering. This level of available funding may be adjusted by the Board. Awards shall be in an amount equal to or less than \$10,000.

Counties that comprise the East Texas Workforce Development Area, which is the project service area include Anderson, Camp, Cherokee, Gregg, Harrison, Henderson, Marion, Panola, Rains, Rusk, Smith, Upshur, Van Zandt, and Wood.

Applications may be submitted at any time. Applications will be considered on a first submitted, first reviewed basis and funding will be awarded to applicants meeting or exceeding the rating criteria standards as funding permits. (Note: For award consideration applications submitted prior to July 1, 2008 will be considered as being submitted on July 1, 2008).

Persons or organizations wanting to receive a Request for Applications (RFA) should request by letter, email or by fax. Requests should be addressed to Gary Allen, Section Chief - Planning/Board Support, Workforce Development Programs, East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662 or email to gary.allenc@twc.state.tx.us or fax at (903) 983-1440, Attention: Gary Allen

Questions concerning the RFA process should also be addressed by email or fax to Gary Allen.

TRD-200802854

David A. Cleveland

Executive Director

East Texas Council of Governments

Filed: June 2, 2008

Texas Education Agency

Notice of Correction: Request for Applications Concerning Dropout Recovery Pilot Program

The Texas Education Agency (TEA) published Request for Applications (RFA) Concerning the Dropout Recovery Pilot Program, 2008-2010, in the May 16, 2008, issue of the *Texas Register* (33 TexReg 4022).

The TEA is amending the eligibility criteria for applicants. Eligible applicants are limited to local educational agencies, open-enrollment charter schools, institutions of higher education, county departments of education, nonprofit organizations that have demonstrated the ability and capacity to provide educational programs to students in any grade from kindergarten through Grade 12, and education service centers (ESCs) within ESC regions 1, 4, 10, 11, 13, 19, or 20. Partnerships of eligible applicants and other nonprofit organizations may also apply, provided they consist of no more than 10 entities. Partnerships applying for this grant must designate one of the eligible entities to receive the grant award and act as the fiscal agent/applicant.

The TEA is also amending the dates of the project. The Dropout Recovery Pilot Program will be implemented during the 2008-2009 school year. This correction reflects a change from the original project dates of the 2008-2009 and 2009-2010 school years.

The ending date of the project has also been revised to reflect the amended project dates. Applicants should plan for an ending date of no later than August 31, 2009. This correction reflects a change from the original ending date of no later than July 31, 2010.

In addition, the title of the RFA has been updated to reflect the amended project dates. The corrected title is Request for Applications Concerning the Dropout Recovery Pilot Program, 2008-2009.

Further Information. For clarifying information about the RFA, contact Donnell Bilsky, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269.

TRD-200802876

Cristina De La Fuente-Valadez

Director, Policy Coordination Division

Texas Education Agency

Filed: June 4, 2008

Employees Retirement System of Texas

Request for Proposals - Evaluation of Actuarial Assumptions

The Employees Retirement System of Texas ("ERS") is soliciting responses from qualified firms to conduct an evaluation of actuarial assumptions to determine the reasonableness, consistency and accuracy of ERS' current health care actuarial services. ERS administers the Texas Employees Group Benefits Program ("GBP"). The GBP is a statewide program providing life, health and disability benefits for employees and retirees of state agencies and institutions of higher education other than the University of Texas System and the Texas A&M University System.

Firms wishing to respond to the Request for Proposals ("RFP") must be professional actuarial services firms that provide health care consulting and cost projection services. The firm must have been in existence as a business entity performing such services for a minimum of five (5) years. The firm must have all necessary permits, licenses, and professional credentials. Appropriate levels and types of fidelity, directors' and officers' or other applicable liability insurance must be in full force at the time the response is submitted and throughout the term of the contract. The principal actuary performing the review must be a Fellow of the Society of Actuaries. The principal actuary performing the review must have a minimum of ten (10) years of experience as an actuary on health plan consulting services and cost projection assignments for health care plans with memberships of at least 100,000 members. Any supporting actuary shall have five (5) years of experience as an actuary on health care consulting services and cost projection assignments for health care plans with memberships of at least 10,000 members. The firm must provide its own work facilities, equipment, supplies and support staff to perform the required services.

ERS will base its evaluation and selection of the firm for the review on the factors and criteria outlined in this notice and in the RFP, including, but not limited to the following, which are not necessarily listed in order of priority: compliance with the RFP; qualifications of the proposed actuarial staff; technical experience, including experience with actuarial reviews of other health care plans and experience in providing actuarial services to other health care plans; the quality of the response, including the demonstration of a clear understanding of the scope of work as well as the appropriateness and adequacy of proposed procedures; the cost of the review; and other factors deemed appropriate by ERS.

ERS reserves the right to reject any response submitted which does not meet the criteria specified in this notice and in the RFP. ERS is under no legal requirement to execute a contract on the basis of this notice. ERS will not pay any costs incurred by any firm in responding to this notice or RFP or in connection with the preparation thereof.

A copy of the complete RFP can be obtained from ERS on or after June 13, 2008. To request a copy of the RFP or for additional information, please contact Marci Sundbeck at ERS at (512) 867-7302, or email her at marci.sundbeck@ers.state.tx.us. The deadline for receipt of responses by ERS is 3:00 p.m. CDT on July 11, 2008.

TRD-200802893

Paula A. Jones

General Counsel

Employees Retirement System of Texas

Filed: June 4, 2008

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 14, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 14, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Albert B. Redding; DOCKET NUMBER: 2008-0797-WOC-E; IDENTIFIER: RN103382289; LOCATION: Port O'Connor, Calhoun County; TYPE OF FACILITY: wastewater plant operator; RULE VIOLATED: 30 Texas Administrative Code (TAC) §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Melissa Keller; REGIONAL OFFICE: 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(2) COMPANY: Cayuga Water Supply Corporation; DOCKET NUMBER: 2008-0356-PWS-E; IDENTIFIER: RN101440998; LOCATION: Anderson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter (mg/L) for total trihalomethanes (TTHM) based on a running annual average; PENALTY: \$735; ENFORCEMENT COORDINATOR: Christopher Keffer, (512) 239-5610; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: Central Bosque Water Supply Corporation; DOCKET NUMBER: 2008-0322-PWS-E; IDENTIFIER: RN101439933; LOCATION: McGregor, McLennan County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain the residual disinfectant concentration in the water within the distribution system at least 0.5 mg/L chloramine; PENALTY: \$240; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: City of Sulphur Springs; DOCKET NUMBER: 2008-0626-PWS-E; IDENTIFIER: RN101265866; LOCATION: Sulphur Springs, Hopkins County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the MCL of 0.080 mg/L for TTHM based on a running annual average; PENALTY: \$675; ENFORCEMENT COORDINATOR: Christopher Keffer, (512) 239-5610; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: Diamond Shamrock Refining Company, L.P.; DOCKET NUMBER: 2008-0276-AIR-E; IDENTIFIER: RN100542802; LOCATION: Three Rivers, Live Oak County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.201(a)(1) and THSC, §382.085(b), by failing to notify the TCEQ within 24 hours after the discovery of an emissions event; 30 TAC §101.20(1) and (3) and §116.715(c)(7), 40 Code of Federal Regulations (CFR) §60.104(a)(2)(i), THSC, §382.085(b), and Air Permit Numbers 50607, PSD-TX-331M1, PSD-TX-804, and PSD-TX-1017, Special Conditions (SC) 1 and 2, by failing to prevent an unauthorized emissions event; PENALTY: \$15,352; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3126; REGIONAL OFFICE: 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(6) COMPANY: Grady Harris dba Lakehurst Meadows; DOCKET NUMBER: 2008-0274-WQ-E; IDENTIFIER: RN105297873; LOCATION: Forney, Kaufman County; TYPE OF FACILITY: single-family residential construction site; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) General Permit TXR15HN48, Part III, Section A.5(c) and the Code, §26.121(a), by failing to prevent the unauthorized discharge of water containing sediments adjacent to water in the state; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: ISP Technologies Inc.; DOCKET NUMBER: 2008-0217-AIR-E; IDENTIFIER: RN100825272; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: specialty chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), THSC, §382.085(b), and Permit Number 22079, SC 1, by failing to prevent the release of unauthorized air contaminants emitted into the atmosphere; 30 TAC §101.201(b) and THSC, §382.085(b), by failing to report an emission event timely; PENALTY: \$3,562; Supplemental Environmental Project (SEP) offset amount of \$1,425 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1425, (713) 767-3500.

(8) COMPANY: Jimmy Espinosa; DOCKET NUMBER: 2008-0340-OSS-E; IDENTIFIER: RN105089288; LOCATION: Eden, Concho County; TYPE OF FACILITY: residential property; RULE VIOLATED: 30 TAC §285.36(b) and §285.3(i), by failing to properly abandon an unauthorized cesspool located at the site; PENALTY: \$131; ENFORCEMENT COORDINATOR: Andrew Hunt, (512) 239-1203; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(9) COMPANY: Luz Diaz dba Chula Vista Grocery; DOCKET NUMBER: 2007-1990-PST-E; IDENTIFIER: RN101679504; LOCATION: Los Fresnos, Cameron County; TYPE OF FACILITY: convenience store with two inactive underground storage tanks (USTs); RULE VIOLATED: 30 TAC §334.47(a)(2) and the Code, §26.350, by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two USTs for which any applicable component of the system is not brought into timely

compliance with the upgrade requirements; PENALTY: \$10,500; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(10) COMPANY: Max Mousaui Mohsen dba King's Food & Gas; DOCKET NUMBER: 2008-0809-PST-E; IDENTIFIER: RN102394392; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: \$875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(11) COMPANY: Milk Transport Services LP; DOCKET NUMBER: 2008-0794-WQ-E; IDENTIFIER: RN104459987; LOCATION: Shallowater, Lubbock County; TYPE OF FACILITY: milk transporter; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(12) COMPANY: Nasa Oil, Inc. dba Nasa Food Mart; DOCKET NUMBER: 2008-0134-PST-E; IDENTIFIER: RN101432599; LOCATION: Webster, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once every month; PENALTY: \$2,650; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1425, (713) 767-3500.

(13) COMPANY: Quail Oak Property Owners Association; DOCKET NUMBER: 2008-0166-MLM-E; IDENTIFIER: RN101277317; LOCATION: Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(d)(1), (e)(1), and (h)(1), by failing to submit "as built" plans and specifications for the water system that have been prepared by a licensed, professional engineer; 30 TAC §290.41(c)(3)(A), by failing to submit well completion data to the commission prior to placing the wells into service; 30 TAC §290.44(d)(4), by failing to provide metering devices at each residential, commercial or industrial service connection for the accumulation of water usage data; 30 TAC §290.105(b) and §290.118(b), by failing to provide water that meets the commission's secondary constituent levels of 0.05 milligrams per liter (mg/L) for manganese; and 30 TAC §291.101(a), by failing to obtain a certificate of public convenience and necessity; PENALTY: \$2,035; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1425, (713) 767-3500.

(14) COMPANY: Royce Homes, L.P.; DOCKET NUMBER: 2008-0460-WQ-E; IDENTIFIER: RN103894788; LOCATION: Tomball, Harris County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), 40 CFR §122.26(c), and TPDES General Permit Number TXR150234, Part II, Section D.3(a), by failing to develop a TPDES storm water pollution prevention plan; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3048; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1425, (713) 767-3500.

(15) COMPANY: Scott Egert dba Scott's Complete Car Care; DOCKET NUMBER: 2008-0796-PST-E; IDENTIFIER: RN102264058; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), by failing to provide release detection; and

30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(16) COMPANY: Seminole Pipeline Company; DOCKET NUMBER: 2008-0200-AIR-E; IDENTIFIER: RN102805058; LOCATION: Tavner, Fort Bend County; TYPE OF FACILITY: compressor station; RULE VIOLATED: 30 TAC §117.335(a) and §122.143(4), Federal Operating Permit (FOP) Number O-01169/General Operating Permit (GOP) Number 511, Site-wide requirements (SWR) (b)(20)-(21), and THSC, §382.085(b), by failing to conduct stack testing; 30 TAC §§106.512(3)(B), 101.20(1), and 122.143(4), 40 CFR §60.8 and §60.335, FOP Number O-01169/GOP Number 511, SWR (b)(7)(D)(xlv) and (23)(b), and THSC, §382.085(b), by failing to conduct the initial performance test; 30 TAC §122.145(2)(A) and THSC, §382.085(b), by failing to submit a complete deviation report; and 30 TAC §122.143(4), FOP Number O-01169/GOP Number 511, SWR (b)(8), and THSC, §382.085(b), by failing to keep records of quarterly visible emission observations of gas turbine stacks; PENALTY: \$10,500; SEP offset amount of \$4,200 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Stryker Lake Water Supply Corporation; DOCKET NUMBER: 2008-0549-PWS-E; IDENTIFIER: RN101450377; LOCATION: New Summerfield, Cherokee County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the MCL of 0.080 mg/L for TTHM based on a running annual average; PENALTY: \$347; ENFORCEMENT COORDINATOR: Christopher Keffer, (512) 239-5610; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(18) COMPANY: Texas H₂O, Inc.; DOCKET NUMBER: 2008-0129-WQ-E; IDENTIFIER: RN101274991; LOCATION: Mansfield, Johnson County and Hood County; TYPE OF FACILITY: wastewater collection and treatment service company; RULE VIOLATED: the Code, §26.121(a), by failing to prevent an unauthorized discharge from a sanitary sewer collection system; and the Code, §26.039(b), by failing to notify the TCEQ of the unauthorized discharge; PENALTY: \$2,100; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Texas Petrochemicals LP; DOCKET NUMBER: 2008-0498-AIR-E; IDENTIFIER: RN100219526; LOCATION: Houston, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 46307, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit the initial notification for an emission event within 24 hours of discovery; PENALTY: \$9,386; SEP offset amount of \$3,754 applied to Harris County Public Health and Environmental Services-Pollution Control Division's Fourier Transform Infra Red Project; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1425, (713) 767-3500.

(20) COMPANY: Village of Wimberley and Guadalupe Blanco River Authority; DOCKET NUMBER: 2007-1712-MWD-E; IDENTIFIER: RN101610350; LOCATION: Hays County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: 30 TAC §305.125(1), TCEQ Permit Number WQ0013321001 Effluent Limita-

tions and Monitoring Requirements A, and the Code, §26.121(a)(1), by failing to comply with its interim permitted effluent limits; and 30 TAC §319.7(a)(4) and TCEQ Permit Number WQ0013321001 Monitoring and Reporting Requirements Number 1, by failing to monitor for pH at the required frequency; PENALTY: \$8,000; SEP offset amount of \$6,400 applied to Texas Association of Resource Conservation and Development Area's, Inc.-Abandoned Tire Clean-Up; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

TRD-200802859

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 3, 2008



Enforcement Orders

An agreed order was entered regarding Capitol City Disposal, Docket No. 2005-0383-MSW-E on May 22, 2008, assessing \$8,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney, at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oxbow Calcining LLC f/k/a Great Lakes Carbon LLC, Docket No. 2006-0782-AIR-E on May 22, 2008, assessing \$32,004 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney, at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Juan J. Rodriguez dba JJ's Cleaners, Docket No. 2006-1051-DCL-E on May 22, 2008, assessing \$140 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney, at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Johnny Dorton dba Ideal Cleaners and dba Your Laundry, Docket No. 2006-1160-DCL-E on May 22, 2008, assessing \$2,370 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Combs, Staff Attorney, at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Starr County, Docket No. 2006-1216-MSW-E on May 22, 2008, assessing \$22,960 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney, at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John Cushman dba Sun Cleaners, Docket No. 2006-1227-DCL-E on May 22, 2008, assessing \$945 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney, at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding U.S. Oil Recovery, L.P., Docket No. 2006-1959-WQ-E on May 22, 2008, assessing \$26,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney, at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Milo Drive, Inc., Docket No. 2007-0220-EAQ-E on May 22, 2008, assessing \$6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney, at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Dusty L. Turner, Docket No. 2007-0408-LII-E on May 22, 2008, assessing \$750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham A. Richard, Staff Attorney, at (512) 239-0107, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ameriforge Corporation dba Forged Vessel Connections, Docket No. 2007-0577-IHW-E on May 22, 2008, assessing \$3,102 in administrative penalties with \$620 deferred.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator, at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding David Gayle Lovett, Docket No. 2007-0592-LII-E on May 22, 2008, assessing \$1,575 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney, at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding San Antonio Water System, Docket No. 2007-0639-MWD-E on May 22, 2008, assessing \$11,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator, at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Coming of Christ Full Gospel Church, A Community Church, Docket No. 2007-0770-PWS-E on May 22, 2008, assessing \$440 in administrative penalties with \$88 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Walnut Creek Special Utility District, Docket No. 2007-0782-PWS-E on May 22, 2008, assessing \$2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney, at (512) 239-0974 Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwest Shipyard, L.P., Docket No. 2007-0794-AIR-E on May 22, 2008, assessing \$77,276 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney, at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eastman Chemical Company, Docket No. 2007-0830-AIR-E on May 22, 2008, assessing \$102,125 in administrative penalties with \$20,425 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator, at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Trinity @ Windfern LLC, Docket No. 2007-0893-MWD-E on May 22, 2008, assessing \$12,390 in administrative penalties with \$2,478 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator, at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Michael Soza dba Water Valley Water Co-op, Docket No. 2007-1133-PWS-E on May 22, 2008, assessing \$11,890 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney, at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Company, Docket No. 2007-1194-AIR-E on May 22, 2008, assessing \$228,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator, at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A Young Adventure Child Care Learning Center Inc., Docket No. 2007-1267-PWS-E on May 22, 2008, assessing \$2,257 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator, at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BAE Systems Tactical Vehicle Systems LP, Docket No. 2007-1329-IWD-E on May 22, 2008, assessing \$28,244 in administrative penalties with \$5,648 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator, at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leon Heijligers dba Center Point Dairy, LLP, Docket No. 2007-1352-AGR-E on May 22, 2008, assessing \$4,000 in administrative penalties with \$800 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator, at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding McWane, Inc., Docket No. 2007-1417-AIR-E on May 22, 2008, assessing \$22,950 in administrative penalties with \$4,590 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator, at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Mart, Docket No. 2007-1456-PWS-E on May 22, 2008, assessing \$9,877 in administrative penalties with \$1,975 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator, at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sabina Petrochemicals LLC, Docket No. 2007-1481-AIR-E on May 22, 2008, assessing \$24,625 in administrative penalties with \$4,925 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator, at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Barge & Boat, Inc., Docket No. 2007-1482-AIR-E on May 22, 2008, assessing \$3,600 in administrative penalties with \$720 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator, at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David Zulejkic dba Buffalo Ridge Mobile Home Community, Docket No. 2007-1498-PWS-E on May 22, 2008, assessing \$4,690 in administrative penalties with \$938 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator, at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Golinda Water Supply Corporation, Docket No. 2007-1502-PWS-E on May 22, 2008, assessing \$315 in administrative penalties with \$63 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator, at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leedo Manufacturing Co., L.P., Docket No. 2007-1517-AIR-E on May 22, 2008, assessing \$72,049 in administrative penalties with \$14,409 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator, at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gulf Chemical & Metallurgical Corporation, Docket No. 2007-1520-AIR-E on May 22, 2008, assessing \$31,050 in administrative penalties with \$6,210 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator, at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Upper Trinity Regional Water District, Docket No. 2007-1525-MWD-E on May 22, 2008, assessing \$3,400 in administrative penalties with \$680 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator, at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2007-1547-AIR-E on May 22, 2008, assessing \$31,375 in administrative penalties with \$6,275 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator, at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SMI Oil Field Services, Inc., Vallourec Industries, Inc., SC Pipe Services, Inc. dba VAM PTS Company, Docket No. 2007-1551-IWD-E on May 22, 2008, assessing \$13,426 in administrative penalties with \$2,685 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator, at (254) 761-3048, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Runaway Bay, Docket No. 2007-1564-MWD-E on May 22, 2008, assessing \$9,675 in administrative penalties with \$1,935 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator, at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2007-1581-AIR-E on May 22, 2008, assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator, at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sterling Chemicals, Inc., Docket No. 2007-1604-IWD-E on May 22, 2008, assessing \$7,875 in administrative penalties with \$1,575 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator, at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Moran, Docket No. 2007-1615-MWD-E on May 22, 2008, assessing \$6,300 in administrative penalties with \$1,260 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator, at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Georgia Gulf Chemicals & Vinyls, LLC, Docket No. 2007-1616-IHW-E on May 22, 2008, assessing \$29,510 in administrative penalties with \$5,902 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator, at (512) 239-0086, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Broadway Grocery, Inc., Docket No. 2007-1633-PST-E on May 22, 2008, assessing \$5,100 in administrative penalties with \$1,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator, at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2007-1637-AIR-E on May 22, 2008, assessing \$13,775 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator, at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Se Yon Oh dba US Food Mart 107, Docket No. 2007-1638-PST-E on May 22, 2008, assessing \$14,625 in administrative penalties with \$2,925 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator, at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Kosse, Docket No. 2007-1669-PWS-E on May 22, 2008, assessing \$8,108 in administrative penalties with \$1,621 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator, at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southern Forest Products, LLC, Docket No. 2007-1694-AIR-E on May 22, 2008, assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Aaron Houston, Enforcement Coordinator, at (409) 899-8784, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Criminal Justice, Docket No. 2007-1705-MWD-E on May 22, 2008, assessing \$3,220 in administrative penalties with \$644 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator, at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lone Star Industries, Inc. dba Buzzi Unicem USA, Docket No. 2007-1719-AIR-E on May 22, 2008, assessing \$7,400 in administrative penalties with \$1,480 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator, at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Liberty Pressure Pumping, L.P., Docket No. 2007-1722-AIR-E on May 22, 2008, assessing \$4,200 in administrative penalties with \$840 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator, at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lee-Var, Inc. dba Palmer of Texas, Docket No. 2007-1724-AIR-E on May 22, 2008, assessing \$19,050 in administrative penalties with \$3,810 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator, at (361) 825 3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding US Petroleum Depot, Inc., Docket No. 2007-1735-AIR-E on May 22, 2008, assessing \$2,850 in administrative penalties with \$570 deferred.

Information concerning any aspect of this order may be obtained by contacting Sidney Wheeler, Enforcement Coordinator, at (512) 239-4969, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Laredo Paving, Inc., Docket No. 2007-1769-AIR-E on May 22, 2008, assessing \$60,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator, at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Midland Village Car Wash, Inc. dba Village East Express Wash & Lube and Village Car Wash & Express Lube, Docket No. 2007-1771-PST-E on May 22, 2008, assessing \$9,250 in administrative penalties with \$1,850 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator, at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oxid L.P., Docket No. 2007-1781-IWD-E on May 22, 2008, assessing \$7,040 in administrative penalties with \$1,408 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator, at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Haldor Topsoe, Inc., Docket No. 2007-1788-AIR-E on May 22, 2008, assessing \$3,350 in administrative penalties with \$670 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator, at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding George Dreher dba Pumpjacks, Etc., Docket No. 2007-1800-AIR-E on May 22, 2008, assessing \$3,150 in administrative penalties with \$630 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator, at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Atrium Companies, Inc., Docket No. 2007-1811-AIR-E on May 22, 2008, assessing \$2,625 in administrative penalties with \$525 deferred.

Information concerning any aspect of this order may be obtained by contacting Sidney Wheeler, Enforcement Coordinator, at (512) 239-4969, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Prime Mart Inc., Docket No. 2007-1814-MLM-E on May 22, 2008, assessing \$7,800 in administrative penalties with \$1,560 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator, at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cameron, Docket No. 2007-1832-WQ-E on May 22, 2008, assessing \$1,150 in administrative penalties with \$230 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator, at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CCAA, L.L.C. dba BCS Stop & Go Potties, Docket No. 2007-1835-MSW-E on May 22, 2008, assessing \$1,387 in administrative penalties with \$277 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator, at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nutri-Feeds, Inc., Docket No. 2007-1838-AIR-E on May 22, 2008, assessing \$4,950 in administrative penalties with \$990 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator, at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Eldorado, Docket No. 2007-1848-MSW-E on May 22, 2008, assessing \$4,810 in administrative penalties with \$962 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator, at (512) 239-0086, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Military Institute of San Antonio Texas, Docket No. 2007-1890-EAQ-E on May 22, 2008, assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator, at (254) 761-3048, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Carrier Corporation, Docket No. 2007-1927-AIR-E on May 22, 2008, assessing \$950 in administrative penalties with \$190 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator, at (361) 825 3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Diamondback Pumping GP LCC, Docket No. 2007-1947-MLM-E on May 22, 2008, assessing \$8,570 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator, at (512) 239-0086, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Petrochemicals LP, Docket No. 2007-1993-AIR-E on May 22, 2008, assessing \$6,575 in administrative penalties with \$1,315 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator, at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Albertson's LLC, Docket No. 2007-1994-AIR-E on May 22, 2008, assessing \$1,040 in administrative penalties with \$208 deferred.

Information concerning any aspect of this order may be obtained by contacting Sidney Wheeler, Enforcement Coordinator, at (512) 239-4969, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cabot Corporation, Docket No. 2007-2013-AIR-E on May 22, 2008, assessing \$3,825 in administrative penalties with \$765 deferred.

Information concerning any aspect of this order may be obtained by contacting Sidney Wheeler, Enforcement Coordinator, at (512) 239-4969, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rk Petroleum Corp., Docket No. 2007-2026-AIR-E on May 22, 2008, assessing \$1875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator, at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J. H. Strain & Sons, Inc., Docket No. 2008-0065-AIR-E on May 22, 2008, assessing \$800 in administrative penalties with \$160 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator, at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Ameri-Forge Group Inc., Docket No. 2007-1971-WQ-E on May 22, 2008, assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator, at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding J. C. Smith and Sons Sand Gravel Inc., Docket No. 2007-1970-WQ-E on May 22, 2008, assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator, at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding William O. Jordon, Docket No. 2007-2007-WQ-E on May 22, 2008, assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator, at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200802883

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 4, 2008



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 14, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 14, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Shalynah, Inc. dba Sammys 3; DOCKET NUMBER: 2006-1001-PST-E; TCEQ ID NUMBER: RN102030186; LOCATION: 1601 West Fairmont Parkway, La Porte, Harris County, Texas; TYPE OF FACILITY: convenience store; RULES VIOLATED: 30 TAC §334.8(c), by failing to conduct effective manual or automatic inventory control procedures for all underground storage tanks (USTs) involved in the retail sale of petroleum substances as a motor fuel; 30 TAC §334.50(b)(2)(A)(i)(III) and (ii), (d)(4)(A)(i) and (ii)(II) and Texas Water Code (TWC), §26.3475(a) and (c)(1), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.51(b) and TWC, §26.3475(c)(2), by failing to equip each UST with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a present level no higher

than the 95% capacity level of the tank; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$11,970; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: SNI Corporation dba Broadway Food Mart; DOCKET NUMBER: 2004-0043-PWS-E; TCEQ ID NUMBER: RN101252732; LOCATION: 2682 Highway 71, Columbus, Colorado County, Texas; TYPE OF FACILITY: convenience store and public water supply system; RULES VIOLATED: 30 TAC §290.109(c)(2) and (3) and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect and submit routine bacteriological samples and repeat samples after a coliform positive result as required; 30 TAC §290.110(d)(1)(C) (formerly 30 TAC §290.110(d)(3)), by failing to use a method that conforms to the requirements of 30 TAC §290.119 relating to analytical procedures; 30 TAC §290.110(c)(4)(A) (formerly 30 TAC §290.110(c)(5)(B)), by failing to conduct and record weekly chlorine residual tests; 30 TAC §290.122(a), by failing to post Public Notices for violations of the maximum contaminant limit for microbial contaminants (coliform positive sample results); 30 TAC §290.41(c)(1)(A), by failing to locate ground water sources so there will be no danger of pollution from unsanitary surroundings; and 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement for the well; PENALTY: \$4,950; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: The City of Galveston; DOCKET NUMBER: 2006-1755-PWS-E; TCEQ ID NUMBER: RN101274249; LOCATIONS: corner of 52nd Street and Avenue A (the main facility) with satellite distribution facilities designated as and commonly referred to by the City as the 30th Street location, the 59th Street location, the Airport location, Jamaica Beach, University of Texas Medical Branch (UTMB), 10-Mile Road, the Texas A&M location, the Port of Galveston, and White Sands, Galveston, Galveston County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.45(b)(1)(D)(i) and THSC, §341.0315(c), by failing to provide a minimum total capacity of 0.6 gallons per minute per connection; 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide a minimum elevated storage capacity of 100 gallons per connection; 30 TAC §290.46(f)(2) and (f)(3)(E)(iv), by failing to maintain copies of completed customer service inspections that can be made available to commission personnel at the time of investigations; 30 TAC §290.46(m), by failing to maintain the 30th Street location in a manner that minimizes the possibility of harboring rodents, insects, and other disease vectors that may cause contamination of the water supply; 30 TAC §290.43(c), by failing to design and erect the roof of the 30th Street location's concrete ground storage tank in accordance with American Water Works Association standards so that no water ponds at any point on the roof and so that the roof has a slope of less than 0.75 inches per foot; 30 TAC §290.43(c)(1), by failing to equip the vent openings on the ground storage tank at the 59th Street location with 16-mesh or finer corrosion resistant screening; 30 TAC §290.46(t), by failing to post legible signs at the Airport, Jamaica Beach, White Sands, 10-Mile Road, and UTMB locations, that contain the name of the water supply and an emergency telephone number where a responsible official can be contacted; 30 TAC §290.46(m)(4), by failing to maintain the ground storage tank at the Airport location in a water-tight condition; 30 TAC §290.43(e), by failing to enclose the elevated tanks at the White Sands and 10-Mile Road locations inside a building or fence designed to prevent intruder access and with

doors or gates that are locked whenever the facility is unattended; 30 TAC §290.46(u), by failing to plug the system's abandoned wells with cement, or to return the wells to a non-deteriorated condition; 30 TAC §290.41(c)(3)(J), by failing to maintain the concrete sealing block surrounding Well Number 6A; 30 TAC §290.42(e)(5), by failing to house the system's hypochlorination solution containers and pumps in a secure enclosure to protect them from vandalism and adverse weather conditions; and 30 TAC §290.44(h)(1)(A) and §290.46(i), by failing to enforce a plumbing ordinance or service agreement to insure that neither cross-connections nor other unacceptable plumbing practices are permitted and that backflow prevention assemblies are properly installed at all connections where the potential for contamination exists; PENALTY: \$12,285; Supplemental Environmental Project offset amount of \$12,285 applied to Trust for Public Land-Galveston Bay Acquisition and Conservation Program; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200802871

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 3, 2008



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 14, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-13087 and must be **received by 5:00 p.m. on July 14, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Thomas Jones; DOCKET NUMBER: 2008-0281-PST-E; TCEQ ID NUMBER: RN102219763; LOCATION: 28042 United States Highway 377, Gordonville, Grayson County, Texas; TYPE OF FACILITY: gasoline service station; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three underground storage tanks (USTs) for which any applicable component of the system was not brought into timely compliance with the upgrade requirements; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition, as applicable; PENALTY: \$8,925; STAFF ATTORNEY: Mary Hammer, Litigation Division, MC 175, (512) 239-2496; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Xklen Corporation; DOCKET NUMBER: 2008-0233-IHW-E; TCEQ ID NUMBER: RN100701507; LOCATION: 7650 County Road 48, Suite F, Rosharon, Brazoria County, Texas; TYPE OF FACILITY: hazardous waste transportation service; RULES VIOLATED: 30 TAC §335.2(b), by failing to prevent the unauthorized storage and processing of wastes transported to the facility; 30 TAC §335.12(a) and §335.14(a), by failing to use manifests for the transportation of hazardous waste of Class I waste; and 30 TAC §335.6, by failing to update its Notice of Registration with changes or additional information concerning waste management or waste composition; PENALTY: \$13,000; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200802870

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 3, 2008



Notice of Receipt of Application for a Municipal Solid Waste Management Facility

Notices of Receipt of Application and Intent to Obtain a New Municipal Solid Waste Permit

For the Period of May 29, 2008

APPLICATION: Republic Waste Services of Texas, Ltd., 1212 Harrison Avenue, Arlington, Tarrant County, Texas 76011, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit for the Brazos Transfer Station. The proposed Type V municipal solid waste transfer station is requesting a permit in order to accept household waste, yard waste, commercial waste, industrial nonhazardous waste, and construction-demolition waste. The facility is located approximately 0.3 miles southwest of the intersection of IH-20 and Nu Energy Drive, Aledo, Parker County, Texas. The TCEQ received the application on April 7, 2008. The permit application is available for viewing and copying at the East Parker County Library, 201 N. FM 1187, Aledo, Parker County, Texas.

ADDITIONAL NOTICE: TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the

mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING: You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING: After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "I/we request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST: If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION: All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. If you need more information about this permit application or the

permitting process, please call TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about TCEQ can be found at our web site at www.tceq.state.tx.us.

Further information may also be obtained from Republic Waste Services of Texas, Ltd at the address stated above or by calling Mr. Nicholas Stefkovich, at (817) 261-8812.

TRD-200802882

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 4, 2008



Notice of Water Quality Applications

The following notices were issued during the period of May 28, 2008 through May 30, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

50'S GROUP PROPERTIES LTD which operates a meat packing plant, has applied for a major amendment to Permit No. WQ0003574000 to authorize an increase in the daily average flow from 395,000 gallons per day to 435,000 gallons per day; an increase in the irrigation area from 201 acres to 268 acres and an increase in Nitrogen loading rate. The current permit authorizes the disposal of slaughterhouse process wastewater, wash water from cattle processing, cooling tower blowdown, boiler blowdown, reverse osmosis reject water, and storm water via irrigation of 201 acres at an application rate not to exceed 1.31 acre-feet/acre/year. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located at 2150 East 37th Street; approximately 2000 feet northeast of the intersection of 37th Street and Pruitt Drive, in the extra territorial jurisdiction of the City of San Angelo, Tom Green County, Texas.

CITY OF HENDERSON has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0010187002 to discontinue the Temporary Variance to the Texas Surface Water Quality Standards (WQS) because a Copper Water Effects Ratio (WER) study was completed by the Applicant and was deemed as approvable by EPA/USFWS in 2002. In accordance with 30 TAC, Chapter 307.6(c)(9), this WER may now be used to recalculate the need for copper limits and/or monitoring requirements. Final approval of the WER will be granted by EPA once the use of the WER has been included in the final public notice and EPA has the opportunity to review any comments made on the copper WER study. The copper WER will be added to Appendix E of the WQS during the next triennial revision. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,000,000 gallons per day. The facility is located at 2397 Farm-to-Market Road 782 North, approximately 2.3 miles north of U.S. Highway 259 and 0.8 mile west of Farm-to-Market Road 782 in Rusk County, Texas.

CITY OF PORT ARTHUR has applied for a renewal of TPDES Permit No. WQ0010364009, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located on Pleasure Island adjacent to

the Sabine-Neches Waterway, approximately 1.6 miles northeast of the Gulfgate Bridge in Jefferson County, Texas.

ENERGY CO LLC which operates Altura Cogen, LLC, a steam and electricity cogeneration facility, has applied for a renewal of TPDES Permit No. WQ0002845000, which authorizes the discharge of storm water and steam condensate on an intermittent and flow variable basis via Outfall 001; and cooling tower blowdown at a daily average flow not to exceed 504,000 gallons per day via Outfall 002. The facility is located at 2330 Sheldon Road, adjacent to the intersection of Avenue C and 5th Street in the LyondellBassell Chemical Plant, in the City of Channelview, in Harris County, Texas.

JACKIE DIANE POWELL who operates a facility that dismantles used vehicles for resale and purchases ferrous and nonferrous metals for resale, has applied for a renewal of TPDES Permit No. WQ0003007000, which authorizes discharge of storm water on an intermittent and variable basis. The facility is located at 5417 North McCarty Road, northeast of the intersection of McCarty Road and Mesa Road and south of Liberty Road in Houston, Texas.

OXY VINYL LP which operates the Pasadena PVC Plant which manufactures polyvinyl chloride resin and is authorized to treat and dispose of wastes from off-site plastic materials, industrial organic chemicals production, and anhydrous ammonia storage, has applied for a major amendment to TPDES Permit No. WQ0000002000 to relocate Outfall 001 to the 24-inch diameter pipe downstream of the second Parshall flume; delete internal Outfall 101 with all monitoring to occur at relocated Outfall 001; authorize the discharge of process wastewater, utility wastewater, domestic wastewater, storm water (including storm water from the adjacent BASF and Houston Ammonia Terminal facilities), BASF and Conduit Specialties Inc process wastewater, and utility wastewater from the adjacent BASF, Houston Ammonia Terminal, and Conduit Specialties Inc at a daily average flow not to exceed 4,000,000 gallons per day via Outfall 001; add increased chemical oxygen demand, total suspended solids and oil and grease effluent limits at Outfall 001; and define utility wastewater discharged via Outfall 001 as including but not limited to cooling tower blowdown, boiler blowdown, washdown water, condensate, demineralized regeneration water, and hydrostatic test water. The current permit authorizes the discharge of process wastewater, utility wastewater, demineralizer wastewater, domestic wastewater, storm water (including storm water from the Houston Ammonia Terminal and the adjacent Enron facility), and wastewater from the adjacent Sunoco (formerly Aristech) facility and from the adjacent (dormant) Enron facility at a daily average flow not to exceed 4,000,000 gallons per day via Outfall 001; and process wastewater, domestic wastewater, demineralizer wastewater, utility wastewater, and wastewater from the adjacent Sunoco (formerly Aristech) and from the adjacent (dormant) Enron facility on an intermittent and flow variable basis via internal Outfall 101. The facility is located at 4403 Pasadena Freeway, approximately one-mile north of the intersection of Beltway 8 and Texas Highway 225, on the west side of Beltway 8, and at the confluence of the Beltway 8 Bridge over the Houston Ship Channel, Harris County, Texas.

PABTEX I LP(Owner) and SAVAGE GULF SERVICES LTD LLP (Operator), which operate a marine cargo handling facility that stores and loads soft coal and petroleum coke, have applied for a renewal of TPDES Permit No. WQ0001702000, which authorizes the intermittent and variable discharge of storm water associated with industrial activity from Outfall 001. The facility is located approximately 0.50 miles southeast of the intersection of State Highway 73 and Taft Avenue, and 0.25 miles southeast of the City of Groves in Jefferson County, Texas.

SAN MIGUEL ELECTRONIC COOPERATIVE INC which operates San Miguel Lignite Mine, has applied for a major amendment to TPDES Permit No. WQ0002043000 to authorize the removal of storm

water only Outfalls 003 - 007 and the addition of Outfalls 003 (new active mining area) and 103 (new post mining area). The current permit authorizes mine pit water, mine depressurization water, and storm water runoff from ponds in the "active mining area" on an intermittent and flow variable basis via Outfalls 001 and 002; mine pit water and storm water runoff from ponds in the "post mining area" on an intermittent and flow variable basis via Outfalls 101, and 102; and storm water on an intermittent and flow variable basis via Outfalls 003 - 007.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200802881

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 4, 2008

General Land Office

Notice of Extension of Public Comment Period

The General Land Office (GLO) hereby gives notice that it has extended the period for public comment for proposed rule amendments and new rules concerning 31 TAC Chapter 15, relating to Coastal Area Planning, Management of the Beach/Dune System, and Coastal Erosion Planning and Response originally published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3885).

The GLO proposed amendments to §15.2, relating to definitions of small and large scale construction and restoration and §15.3, relating to review periods for large and small scale construction, standard and expedited periods for review of local government beach and dune plans by the GLO, and determination of the line of vegetation by the GLO necessary for establishing the boundary of the public beach easement. The GLO proposed an amendment to §15.8, relating to beach user fees. The GLO also proposed new §15.16 and amended §15.41 in order to provide guidelines for local governments to establish Erosion Response Plans (ERPs) that incorporate a building set-back line.

To comment on the proposed rulemaking, please send a written comment to Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or e-mail to walter.talley@glo.state.tx.us. Written comments must be received no later than 5:00 p.m., July 16, 2008.

TRD-200802892

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: June 4, 2008

Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by UNIVERSAL HEALTH CARE, INC., a foreign health maintenance organization (HMO). The home office is in St. Petersburg, Florida.

Application for admission to the State of Texas by UNIVERSAL HEALTH CARE, INC., under the assumed name TEXAS UNIVER-

SAL HEALTH CARE, a foreign health maintenance organization (HMO). The home office is in St. Petersburg, Florida.

Application for admission to the State of Texas by AMERICAN ACCESS CASUALTY COMPANY, a foreign fire and/or casualty company. The home office is in Oakbrook Terrace, Illinois.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200802889

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: June 4, 2008

Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Principal Life Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal Division - Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of Principal Life Insurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, and a determination that all requirements of law have been met, the Commissioner or his designee may take final action on the applicant's election to be a risk-assuming health benefit plan issuer.

TRD-200802844

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: June 2, 2008

Notice of Public Hearing

Notice is hereby given that the Commissioner of Insurance will hold a public hearing under Docket No. 2684 on July 15, 2008, beginning at 10:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider requests filed by Stewart Title Guaranty Company and the Texas Land Title Association (TLTA) to amend Procedural Rule 5 (P-5) of the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas and to consider additional rules, forms or endorsements

regarding the restrictions, encroachments, mineral endorsements and rules related thereto.

The Commissioner further provides notice that Bulletin No. B-0013-08 is hereby withdrawn in its entirety.

The Commissioner of Insurance has jurisdiction over the matters set out in this notice pursuant to Texas Insurance Code, Section 31.021, Chapters 2501, 2703, and Section 2551.003 and pursuant to the Texas Administrative Code, Title 28, Chapter 9. The procedure of the hearing will be governed by the Rules of Practice and Procedure before the Department of Insurance (Texas Administrative Code, Title 28, Chapter 1, Subchapter A) and the Administrative Procedure Act (Texas Government Code, Chapter 2001). A copy of the request submitted by Stewart Title Guaranty Company and TLTA may be obtained by submitting a request to the Chief Clerk Office by contacting Sylvia Gutierrez at Sylvia.Gutierrez@tdi.state.tx.us or (512) 463-6327.

TRD-200802888

Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: June 4, 2008

Texas Lottery Commission

Instant Game Number 774 "\$1,000,000 Vegas Luck"

The Texas Lottery Commission filed for publication Instant Game Number 774 "\$1,000,000 Vegas Luck." The document was originally published with the November 17, 2006, issue of the *Texas Register* (31 TexReg 9534). The procedure for claiming a \$1,000,000 prize was changed after the procedure was originally filed with the Texas Register. Effective June 30, 2008, a \$1,000,000 prize may be claimed at any Texas Lottery Claim Center. Sections 2.3.B - F, "Procedure for Claiming Prizes," were amended as Sections 2.3.B - E which now read as follows:

2.3 Procedure for Claiming Prizes.

B. To claim a "\$1,000,000 VEGAS LUCK" Instant Game prize of \$2,000, \$10,000 or \$1,000,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$1,000,000 VEGAS LUCK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

TRD-200802835

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 2, 2008

Instant Game Number 817 "\$1 Million Cash"

The Texas Lottery Commission filed for publication Instant Game Number 817 "\$1 Million Cash." The document was originally published with the June 22, 2007, issue of the *Texas Register* (32 TexReg 3894). The procedure for claiming a \$1,000,000 prize was changed after the procedure was originally filed with the Texas Register. Effective June 30, 2008, a \$1,000,000 prize may be claimed at any Texas Lottery Claim Center. Sections 2.3.B - F, "Procedure for Claiming Prizes," were amended as Sections 2.3.B - E which now read as follows:

2.3 Procedure for Claiming Prizes.

B. To claim a "\$1 MILLION CASH" Instant Game prize of \$1,000, \$10,000 or \$1,000,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$1 MILLION CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp pro-

gram or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

TRD-200802836

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: June 2, 2008



Instant Game Number 823 "\$130 Million Spectacular"

The Texas Lottery Commission filed for publication Instant Game Number 823 "\$130 Million Spectacular." The document was originally published with the March 30, 2007, issue of the *Texas Register* (32 TexReg 1951). The procedure for claiming a \$1,000,000 prize was changed after the procedure was originally filed with the Texas Register. Effective June 30, 2008, a \$1,000,000 prize may be claimed at any Texas Lottery Claim Center. Sections 2.3.B and 2.3.C, "Procedure for Claiming Prizes," were amended and now read as follows:

2.3 Procedure for Claiming Prizes.

B. To claim a "\$130 MILLION SPECTACULAR" Instant Game prize of \$1,000, \$2,000, \$20,000, \$50,000 or \$1,000,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "\$130 MILLION SPECTACULAR" top level prize of \$5,000,000, the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

TRD-200802837

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: June 2, 2008



Instant Game Number 825 "\$1 Million Extravaganza"

The Texas Lottery Commission filed for publication Instant Game Number 825 "\$1 Million Extravaganza." The document was originally published with the May 25, 2007, issue of the *Texas Register* (32 TexReg 2930). The procedure for claiming a \$1,000,000 prize

was changed after the procedure was originally filed with the Texas Register. Effective June 30, 2008, a \$1,000,000 prize may be claimed at any Texas Lottery Claim Center. Sections 2.3.B - F, "Procedure for Claiming Prizes," were amended as Sections 2.3.B - E which now read as follows:

2.3 Procedure for Claiming Prizes.

B. To claim a "\$1 MILLION EXTRAVAGANZA" Instant Game prize of \$1,000, \$10,000 or \$1,000,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$1 MILLION EXTRAVAGANZA" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

TRD-200802840

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: June 2, 2008



Instant Game Number 833 "\$130 Million Payout Bonanza"

The Texas Lottery Commission filed for publication Instant Game Number 833 "\$130 Million Payout Bonanza." The document was originally published with the May 11, 2007, issue of the *Texas Register* (32 TexReg 2718). The procedure for claiming a \$1,000,000 prize was changed after the procedure was originally filed with the Texas Register. Effective June 30, 2008, a \$1,000,000 prize may be claimed at any Texas Lottery Claim Center. Sections 2.3.B and 2.3.C, "Procedure for Claiming Prizes," were amended and now read as follows:

2.3 Procedure for Claiming Prizes.

B. To claim a "\$130 MILLION PAYOUT BONANZA" Instant Game prize of \$1,000, \$2,000, \$20,000, \$50,000 or \$1,000,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "\$130 MILLION PAYOUT BONANZA" top level prize of \$5,000,000, the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

TRD-200802841
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 2, 2008



Instant Game Number 1016 "\$1 Million Holiday Winnings"

The Texas Lottery Commission filed for publication Instant Game Number 1016 "\$1 Million Holiday Winnings." The document was originally published with the September 28, 2007, issue of the *Texas Register* (32 TexReg 6889). The procedure for claiming a \$1,000,000 prize was changed after the procedure was originally filed with the Texas Register. Effective June 30, 2008, a \$1,000,000 prize may be claimed at any Texas Lottery Claim Center. Sections 2.3.B - F, "Procedure for Claiming Prizes," were amended as Sections 2.3.B - E which now read as follows:

2.3 Procedure for Claiming Prizes.

B. To claim a "\$1 MILLION HOLIDAY WINNINGS" Instant Game prize of \$2,000, \$10,000 or \$1,000,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$1 MILLION HOLIDAY WINNINGS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event

that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

TRD-200802842
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 2, 2008



Instant Game Number 1050 "Pieces of Eight"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1050 is "PIECES OF EIGHT". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1050 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1050.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8 SYMBOL, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$2,000 and \$20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1050 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8 SYMBOL	DBL
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
19	NTN
20	TWY
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$2,000	TWO THOU
\$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$2,000 or \$20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven

(7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1050), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1050-0000001-001.

K. Pack - A pack of "PIECES OF EIGHT" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery

pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "PIECES OF EIGHT" Instant Game No. 1050 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "PIECES OF EIGHT" Instant Game is determined once the latex on the ticket is scratched off to expose 18 (eighteen) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either GOLD NUMBER play symbol, the player wins the PRIZE shown for that number. If a player reveals an "8" play symbol, the player wins DOUBLE the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 18 (eighteen) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 18 (eighteen) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 18 (eighteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 18 (eighteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "8" (doubler) play symbol will only appear on intended winning tickets and only as indicated by the prize structure.

C. No matching non-winning prize symbols on a ticket.

D. No duplicate GOLD NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).

2.3 Procedure for Claiming Prizes.

A. To claim a "PIECES OF EIGHT" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "PIECES OF EIGHT" Instant Game prize of \$2,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "PIECES OF EIGHT" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
 2. delinquent in making child support payments administered or collected by the Attorney General;
 3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
 4. in default on a loan made under Chapter 52, Education Code; or
 5. in default on a loan guaranteed under Chapter 57, Education Code.
- E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "PIECES OF EIGHT" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "PIECES OF EIGHT" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 1050. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1050 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	787,920	10.20
\$4	659,280	12.20
\$5	96,480	83.33
\$10	112,560	71.43
\$20	48,240	166.67
\$50	33,567	239.52
\$100	12,931	621.76
\$500	950	8,463.16
\$2,000	20	402,000.00
\$20,000	9	893,333.33

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.59. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1050 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1050, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200802843
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 2, 2008

North Central Texas Council of Governments

Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1184). The selected consultant will perform technical and professional work for the Bellaire Area Sustainable Development Planning Project for the City of Hurst.

The consultant selected for this project is CDS/Spillette, 1250 Wood Branch Park Drive, Suite 100, Houston, Texas 77079. The maximum amount of this contract is \$103,750.

TRD-200802872
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: June 3, 2008

Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on May 28, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable San Antonio, L.P. for An Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35720 before the Public Utility Commission of Texas.

The requested CFA service area includes the addition of the municipalities of Balcones Heights, Castle Hills, and Grey Forest, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35720.

TRD-200802861

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 3, 2008

◆ ◆ ◆
**Notice of Application for Designation as an Eligible
Telecommunications Carrier and Eligible Telecommunications
Provider**

Notice is given to the public of an application filed with the Public Utility Commission of Texas on May 29, 2008, for designation as an eligible telecommunications provider (ETP) and eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.417 and §26.418, respectively.

Docket Title and Number: Application of Worldcall Interconnect Inc. for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider. Docket Number 35728.

The Application: The company is requesting ETC/ETP designation in order to be eligible to receive federal and state universal service funding to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs and ETPs for service areas set forth by the commission. Worldcall Interconnect, Inc. seeks ETC/ETP designation in the designated rural study areas as depicted in Attachment C of its application.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by July 3, 2008. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888)-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 35728.

TRD-200802860
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 3, 2008

◆ ◆ ◆
**Notice of Application for Service Provider Certificate of
Operating Authority**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 27, 2008, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of OneTone Telecom, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 35716 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, and long distance services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free

at 1-888-782-8477 no later than June 18, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35716.

TRD-200802820
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 30, 2008

◆ ◆ ◆
**Notice of Application for Service Provider Certificate of
Operating Authority**

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on May 29, 2008, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of CLERTECH.COM, INC. for a Service Provider Certificate of Operating Authority, Docket Number 35721 before the Public Utility Commission of Texas.

Applicant intends to provide ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, T1-Private Line, Frame Relay, Fractional T1, and wireless services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 18, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35721.

TRD-200802862
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 3, 2008

◆ ◆ ◆
**Notice of Application for Service Provider Certificate of
Operating Authority**

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on May 29, 2008, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of One-Call Telcom, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 35722 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance, and wireless services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free

at 1-888-782-8477 no later than June 18, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35722.

TRD-200802863

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 3, 2008



Notice of Application to Relinquish Retail Electric Provider (REP) Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on May 29, 2008, to relinquish retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Dynegy Energy Marketing, L.P. to Relinquish its Retail Electric Provider (REP) Certification, Docket Number 35723 before the Public Utility Commission of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 20, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35723.

TRD-200802864

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 3, 2008



Request for Proposals: Consulting Expert Services Concerning the Compliance of Certain Generating Units with Rules on Governor Response and the Provision of Frequency Bias

The Public Utility Commission of Texas (PUCT or commission) is issuing a Request for Proposals (RFP) for a person or entity to provide consulting services in connection with a Notice of Violation issued by the PUCT against International Power America, Inc. (IPA). The PUCT is responsible for monitoring market power associated with the generation and sale of electricity in Texas. Texas Utilities Code §39.157(a). On April 11, 2008, the PUCT issued a Notice of Violation (NOV) against IPA. The NOV alleges generally that IPA did not comply with ERCOT rules and operating guides relating to governor response and frequency bias. The NOV and related information can be found on the PUCT Interchange. To reach the PUCT Interchange, go to <http://interchange.puc.state.tx.us/WebApp/Interchange/application/dbapps/login/pgLogin.asp>. Click on "Login." At the next screen, enter docket number 34738.

Under the direction of a PUCT staff attorney, the Contractor will perform the following services:

- * review and evaluate the discovery responses and testimony filed in the proceeding by International Power America, Inc. and its affiliates (collectively "IPA") to assess the validity of any issues raised concerning the performance and performance capabilities of generating units owned or operated by IPA and their compliance with the rules and op-

erating guides of the Electric Reliability Council of Texas relating to governor response and the provision of frequency bias;

- * consult with staff counsel concerning findings and recommendations concerning the validity of any issues raised by IPA, in accordance with the deadlines established in the procedural schedule for the contested case; and

- * perform such other services as directed.

The contractor's duties may include, without limitation:

- * assisting counsel in propounding and responding to discovery requests;

- * attending the hearing in this proceeding;

- * assisting counsel in cross-examining IPA's witnesses;

- * assisting counsel and staff during the proceeding as directed; and

- * assisting counsel in preparing post-hearing briefs and exceptions and replies to proposals for decision.

RFP documentation may be obtained by contacting:

Purchaser

Public Utility Commission of Texas

P.O. Box 13326

Austin, TX 78711-3326

(512) 936-7069

purchasing@puc.state.tx.us

RFP documentation also is located on the PUCT website at <http://www.puc.state.tx.us/about/procurement/currenttrfps.cfm>.

Deadline for submission is 5:00 p.m. on Wednesday, June 18, 2008.

TRD-200802821

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 30, 2008



Second Notice of Amended Application for Certificate of Convenience and Necessity for a Proposed Transmission Line in Chambers, Hardin, Jasper, Jefferson, Liberty, Newton and Orange Counties, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on May 23, 2008 errata to the amended application for a certificate of convenience and necessity for a proposed transmission line in Chambers, Hardin, Jasper, Jefferson, Liberty, Newton and Orange Counties, Texas.

Docket Style and Number: Application of Kelson Transmission Company, LLC for a Certificate of Convenience and Necessity for the Amended Proposed Canal to Deweyville 345 kV Transmission Line Within Chambers, Hardin, Jasper, Jefferson, Liberty, Newton, and Orange Counties, Docket Number 34611.

The Application: This application includes facilities subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies. The errata to the amended application of Kelson Transmission Company, LLC (Kelson Transmission) for a proposed transmission line is filed to reflect a determination by the General Land Office that a portion of Kelson Transmission's

proposed Canal to Deweyville transmission line project is within the Coastal Management Program boundary.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 34611.

TRD-200802866

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: June 3, 2008



Texas State Technical College System

Notice of Contract Award

This publication is filed pursuant to Texas Government Code, §2254.030. The Invitation to Bid on Economic Consulting Services was published in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3695).

DESCRIPTION OF ACTIVITIES OF PRIVATE CONSULTANT:

Texas State Technical College (TSTC) System has entered into a major consulting services contract for the following services:

The TSTC System has been a vital part of the educational complex of the state for decades and is a major source of skilled workers that serve to make Texas competitive for high growth enterprises. At present, however, TSTC receives much of its funding based on a set of parameters and formulas which is less than optimal. In particular, the current approach provides incentives to maximize contact hours and offer two-year programs. In reality, many of the most critical technical occupations currently require certifications and training that can be accomplished in a shorter period of time. Both students and employers prefer this approach, and it is more in line with the overall curricula and programs of TSTC within the Texas educational complex. Thus, the current funding mechanism creates inefficiencies and outcomes which neither make the best use of fiscal resources nor maximize the potential benefits to economic competitiveness. To alleviate this situation, TSTC is proposing a new approach to its appropriations which is results-oriented and tied to its economic and revenue contributions. The purpose of the consulting services sought is to quantify the potential benefits of this alternative mechanism.

Contractor will conduct all initial research necessary to prepare the analysis.

Contractor will define and compile the appropriate inputs to be used in the impact assessment process.

Contractor will evaluate the overall economic impact of the current programs at TSTC on business activity in Texas using the information described above and the Texas Multi-Regional Impact Assessment System. The analysis will include an estimate of the effect on state fiscal revenues.

Contractor will define two illustrative scenarios of potential performance which are realistic under a more "outcomes" focused system. Contractor will then evaluate these patterns using the approach described above.

Contractor will prepare a comprehensive report setting forth the results of this study and placing them in a proper economic and fiscal perspective.

NAME AND BUSINESS ADDRESS OF PRIVATE CONSULTANT:

The private consultant engaged by the TSTC System for these activities is The Perryman Group, whose business address is 510 N. Valley Mills Dr., Suite 300, Waco, TX 76710.

TOTAL VALUE AND TERM OF THE CONTRACT:

The total value of the contract is \$51,200. The term of the contract began on June 2, 2008, and will terminate on August 2, 2008, or upon completion of work described herein.

DATES ON WHICH REPORTS ARE DUE:

The final report regarding the study will be provided within 60 days of provision of the input information and is estimated to be August 15, 2008.

For information regarding this publication, contact Dr. J. Gary Hendricks, Vice Chancellor for Financial and Administrative Services, at (254) 867-3952.

TRD-200802853

Dr. J. Gary Hendricks

Vice Chancellor for Financial and Administrative Services

Texas State Technical College System

Filed: June 2, 2008



Texas Department of Transportation

Public Notice of Final Environmental Impact Statement (Grand Parkway Segment F-1, Harris County, Texas)

In the May 30, 2008, issue of the *Texas Register* (33 TexReg 4390), the Texas Department of Transportation, Environmental Division, published a Notice of Final Environmental Impact Statement (Grand Parkway Segment F-1, Harris County, Texas). The deadline date for comments has been changed and extended. The following notice is re-published with the new deadline.

Pursuant to 43 Texas Administrative Code §2.5(e)(8)(B), the Texas Department of Transportation is advising the public of the availability of the Final Environmental Impact Statement (FEIS) for the proposed construction of State Highway 99, US 290 to SH 249 (the Grand Parkway Segment F-1) northwest of Houston in Harris County, Texas. Comments regarding the FEIS should be submitted to The Grand Parkway Association, Attention: Segment F-1 Comments, located at 4544 Post Oak Place, Suite 222, Houston, Texas 77027 or the Director of Project Development at the Texas Department of Transportation's Houston District Office located at 7600 Washington Avenue, Houston, Texas prior to 5:00 p.m. on **July 10, 2008**. The Texas Department of Transportation's mailing address is P.O. Box 1386, Houston, Texas, 77251-1386.

The purpose of the proposed action is to provide improved access to the existing and future thoroughfare system, reduce area traffic congestion, improve safety, and improve area-wide mobility. A full range of alternatives were identified and evaluated for Segment F-1 at the corridor level (five corridors), transportation mode level (No Build, Transportation System Management Alternatives (TSM), Travel Demand Alternatives (TDM), and Modal Alternatives), and at the alignment level. The proposed action consists of the construction of a controlled access tollway from US 290 to SH 249 in Harris County, a distance ranging from 12.03 to 12.73 miles, depending on the alternative alignment considered. The proposed facility will consist of a four-mainlane con-

trolled access tollway within a 400-foot (ROW) width. A total of three build alternative alignments, in addition to the No-Build alternative, have been presented in the FEIS. All three alternative alignments lie between US 290 and SH 249 in a west-east direction. Alternative Alignment A begins at US 290 and traverses mainly through the center of the study area. This alignment alternative terminates at SH 249, approximately 1.6 miles east of Willow Creek and is 12.7 miles in length. Alternative Alignment B starts at the same location as Alternative Alignment A but traverses mainly through the southern portion of the study area. Alternative Alignment B terminates at the same location of Alternative Alignment A, but is 12.1 miles in length. Alternative Alignment C starts at the western portion of the study area and traverses east mainly through the north-western portion of the study area. Alternative Alignment C terminates at the same location as Alternative Alignments A and B and is 12.7 miles in length.

The preferred corridor and transportation mode and the recommended alternative alignment as presented in the DEIS, were selected after careful consideration and assessment of the potential environmental impacts and evaluation of agency and public comments. After consideration of all agency and public comments received on the Draft Environmental Impact Statement (DEIS) as well as updated environmental data, the Grand Parkway Association, in coordination with TxDOT and FHWA, selected a Preferred Alternative Alignment. It was determined after careful review of the DEIS comments that the Recommended Alternative Alignment as presented in the DEIS be carried forward as the Preferred Alternative Alignment. The preferred build alternative that has emerged from the study was proposed on the basis of its ability to best facilitate the project's Need and Purpose while minimizing impacts to the natural, physical, and social environments. The Preferred Build Alternative Alignment begins and terminates at the same location as Alternatives A and B, and is 12.03 miles in length. The preferred alternative alignment for Segment F-1 would require the acquisition of new ROW (616 acres), the adjustment of utility lines, and the filling of aquatic resources including jurisdictional wetlands (28.68 acres). The Preferred Alignment as presented in the FEIS would displace three residential properties. No business displacements would occur, and no archeological sites, historic properties, or endangered species are expected to be affected.

Copies of the FEIS and other information about the project may be obtained at the Texas Department of Transportation's Houston District Office at the previously mentioned address. For further information, please contact David Gornet at (713) 965-0871 or Pat Henry, P.E. at (713) 802-5241. Copies of the FEIS may also be reviewed at the offices of the Grand Parkway Association, located at 4544 Post Oak Place, Suite 222, Houston, Texas; at the Grand Parkway Association website, www.grandpky.com; at the Houston Public Library, Central Branch, 500 McKinney, Houston, Texas; at the Harris County Public Library, Tomball Branch, 30555 Tomball Parkway, Tomball, Texas; and at the Harris County Public Library, Northwest Branch, 11355 Regency Green Drive, Cypress, Texas.

TRD-200802857
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 3, 2008

University of Houston

Amended Notice of Request for Proposal

As an amendment to the University of Houston's Notice of Request for Proposal published in the May 23, 2008, issue of the *Texas Register* (33 TexReg 4253), the General Instructions section shall be amended as follows:

GENERAL INSTRUCTIONS: Submit one (1) original and five (5) copies of your proposal in a sealed envelope to: Beverly Ruffin, Office of Finance, University of Houston, 5000 Gulf Freeway, Bldg 2, Room 219, Houston, Texas 77204-0911 before 3:00 p.m. June 23, 2008. The original shall be prepared on a word processor and formatted in at least 10-point-font that is clearly readable. The copies shall be of good, readable quality.

All other terms and conditions of the Notice of Request for Proposed shall remain and are hereby unaffected.

TRD-200802808
Brian S. Nelson
Associate General Counsel/Executive Director
University of Houston
Filed: May 29, 2008

The University of Texas System

Notice of Intent to Seek Consultant Services

The University of Texas Health Science Center at Houston

In accordance with the provisions of *Texas Government Code*, Chapter 2254, The University of Texas Health Science Center at Houston will be seeking Invitation for Offers to hire a consultant to provide a development of branding and marketing initiative.

The President of the University of Texas Health Science Center at Houston has made a finding of fact that the consulting services are necessary. The University of Texas Health Science Center at Houston does not currently have the in-house expertise to complete this project.

An award will be made to the proposer that submits the highest ranked proposal based on evaluation criteria developed by the University.

Parties interested in a copy of the Invitation for Offers should contact:

Laura Wong, C.T.P.
Purchasing Contracts Administrator
Procurement Services

The University of Texas Health Science Center at Houston

1851 Crosspoint, OCB 1.160

Houston, TX 77054

Voice: (713) 500-8056

Email: laura.wong@uth.tmc.edu

The proposal submission deadline will be Thursday, July 3, 2008 at 2:00 p.m. Central Prevailing Time.

TRD-200802887
Francie A. Frederick
General Counsel to the Board of Regents
The University of Texas System
Filed: June 4, 2008

How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the TAC.

The TAC volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the TAC, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the TAC scheme, each section is designated by a TAC number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).